



THE CITY OF SAN DIEGO

REPORT TO BUDGET AND FINANCE COMMITTEE

DATE: January 25th, 2012
TO: Honorable Committee Chair and Members
FROM: Tony Heinrichs, Director - Public Works Department
SUBJECT: A 21st Century Capital Improvements Process: Streamlining and Transparency

A. BACKGROUND:

On November 2, 2011 the Budget & Finance Committee (Committee) requested staff to return to the Committee with the necessary legal and policy changes to the applicable Council Policy and Code (i.e., Municipal Code and Land Development Code) to streamline our Capital Improvements Program (CIP) and public works contracting process. CIP streamlining reforms will expedite the process of harnessing scarce resources on job-generating projects that revitalize our neighborhoods. Furthermore, staff is recommending a series of steps to enhance transparency that will bring our city government closer to the people and put more information at the fingertips of Council and the public.

This follow-up report provides status updates for the recommendations Council requested we bring back to the Committee as well as some additional ones discussed during the Committee's meeting and/or identified after the meeting. The report contains attachments that include detailed specific policy/code modifications for the purpose of implementing the recommendations. It also provided the City Attorney's Office (CAO) with an opportunity to streamline and update some existing ambiguities, conflicts, redundancies, and typographical errors that usually result from various code amendments over the years.

B. STREAMLINING CIP AND PUBLIC WORKS CONTRACTING IMPROVEMENTS STATUS UPDATE

The following recommendations were discussed as part of the Public Works Department's report to the Committee on November 2nd, 2011 (Exhibit A).

1. **Allow Council's approval of the CIP budget to replace the need for individual council approvals for the awarding of design and construction**

contracts for each item in the CIP budget; only projects not previously approved by Council in the CIP budget would need to be brought to Council for approval.

Status Update: The CAO has drafted modifications to Municipal Code to increase the Mayor's authority (from \$1M to \$30M) to award Public Works Contracts which have already been approved by Council through the annual CIP budget process. Please see Exhibit C, for detailed proposed revisions to Municipal Code (i.e., Chapter 2, Article 2, Division 31).

This long overdue adjustment should cover the majority of City projects (i.e., in size). A companion effort to this item corresponds to a revision to Council's budget process as it pertains to CIP and is addressed later in the CIP Transparency section of the report.

2. Adjust current approval thresholds and add an additional threshold for the acquisition of Easements.

Status Update: The CAO has drafted modifications to the Municipal Code (Exhibits B, C, and D) to make some additional procurement adjustments:

Item	Type of Contract	Current Threshold	Recommended Threshold
A	CIP related consultants agreements	\$250K	\$1M
B	Change Order limit	\$200K	\$500K; but, not to exceed the total amount authorized for the project by ordinance or resolution.
C	Job Order Contracting (JOC)Tasks	\$500K	\$1M

This is also an opportunity for streamlining CIP delivery within the Job Order Contracting (JOC) process, also known as General Requirements Contracts. JOC is a method of performing public works projects where contractors bid unit prices for different types of work, and are paid based on the actual quantities of work performed. The CAO has identified some necessary modifications to the Code to reconcile the differences between the Code and the Charter as described below.

In June of 1998, the City Municipal Code was amended to authorize the use of JOCs, but only in limited circumstances because an amendment to the City Charter was pending to allow for broader use of JOCs. The voters approved the use of JOCs in November of 1998. However, the Municipal Code was never amended to reflect the voters' approval of JOCs, and the current provisions of the Municipal Code are more restrictive than necessary. The proposed amendments to the Municipal Code allow City to use JOCs for more routine public works projects.

Regarding the easement/land acquisitions, the CAO has determined no modifications to the Municipal Code are necessary. Furthermore, the CAO has expressed that the only direction provided regarding property acquisitions is Council Policy 700-32, which does not require any Council action (but appropriation of funds is still needed).

When the project budget is approved by Council with a portion reserved for property acquisition, staff should be authorized to acquire the necessary property interest without further Council approval as long as the acquisition is accomplished at or below the amount allocated in the budget. If the acquisition is over budget, staff would return the item to Council to approve the acquisition. This process mirrors the one that is used for the disposition of surplus real estate assets. However, for many years it has been a continued standard practice to take real property acquisitions (mostly easements) to Council for approval after approval of a project, but prior to the time of purchase (when the property interests and costs are certain).

Therefore, for streamlining reasons staff is proposing to change the existing practice to only go to Council if the project budget as a whole is exceeded.

3. Modify Municipal Code to allow for design-build Multiple Award Construction Contracts (MACC).

Status Update: The CAO has drafted modifications to the Municipal Code (Exhibit E) primarily by adding a new section authorizing the City to award design-build contracts to more than one design-build entity to compete for public works projects on a task order basis. MACC will be subject to Council imposed limitations summarized below:

- a) Multiple award design-build contracts provide for a period of up to 3 years of competition for task orders. The contracts may continue for a period longer than 3 years only as necessary to complete outstanding task orders.
- b) No contract may guarantee a design-build entity cumulative task orders in excess of \$50K.
- c) A task order may not exceed \$10M without City Council approval.
- d) The cumulative amount of task orders issued to all design-build entities awarded contracts through each request for qualifications or proposals may not exceed \$100M without City Council approval.

4. Modify the Land Development Code as it relates to Site Development Permits for CIP projects.

Status Update: Several code modifications are being drafted which would continue to require that public projects comply with the Environmentally Sensitive Lands Regulations and Historic Resources Regulations. Public projects that currently require a discretionary review for approval would continue to be

discretionary, subject to California Environmental Quality Act review, subject to community review, and subject to standard public notice. However, public projects would no longer be required to go through the duplicative processes for a Site Development Permit Process Three for environmentally sensitive lands or a Site Development Permit Process Four for Historic Resources.

The proposed code amendment would provide the following benefits:

- a) Streamline duplicative public hearings for approval of public projects that have already received some level of support, such as approval for funding.
- b) Reduction in time of approximately 2 months including time for preparation of staff reports, resolutions, permits, permit findings, public noticing packages, all required to be finalized at least two weeks prior to hearing.
- c) Reduction in costs associated with hearing preparations including staff attendance, and preparation of reports, resolutions, permits, and permit findings.
- d) Reduction in cost associated with noticing packages including mailed notices to all owners and occupants within 300 feet of the project and published newspaper notices.

Please see the following tentative timeline (assuming general support for the proposal) for amendments to the permit process for City projects:

Draft Code Amendments	Begun
Environmental Analysis	2-13-12 through 2-24-12
Code Monitoring Team Presentation	3-14-12
Community Planners Committee Presentation	3-27-12
Public Review and Comment	4-2-12 through 4-13-12
Planning Commission Hearing	6-7-12
City Council Hearing	7-17-12
City Council Hearing - 2 nd Reading	7-31-12
Effective Date Outside of Coastal Overlay Zone	9-11-12
Submittal to California Coastal Commission	9-21-12
California Coastal Commission Hearing	January 2014
Possible City Council Hearing to Address California Coastal Commission Modifications	March 2014

5. Reconcile Council Policies 600-24 and 600-33 as they relate to park projects.

Status Update: Council Policies 600-24 and 600-33 contain provisions for providing community input on projects that result in unclear recommendation-making authority for park projects. In order to reconcile the differences, staff has drafted modifications to both policies, which we submit for Council consideration. Please see Exhibits F and G for detailed proposed revisions.

6. Authorize Mayoral approval to transfer project savings at project completion to other projects.

Status Update: Beginning with FY13, the list of unfunded or underfunded proposed projects along with the project information e.g., a brief scope, priority, and funding will be put together by CIPRAC (Capital Improvements Program Review and Advisory Committee) during the CIP budget process. The list will be submitted to Council for review and approval and the authority to allow transfers of funds to be included in the annual Appropriation Ordinance.

C. ADDITIONAL RECOMMENDATIONS

Encouraged by the Committee's positive response last November, staff has identified additional recommendations for further streamlining of the CIP process.

1. Bid Protest Process Clarification

In response to the request from the Committee to clarify who is responsible for prescribing bid protest regulations, the CAO has proposed changes and clarifications to the existing Municipal Code which govern the bid protest process unless state or federal funding require their process. The proposed changes also reconcile an existing conflict between City's bid protest procedures and contractor standards ordinance that was discovered as part of this review. Furthermore, the CAO has taken this opportunity to streamline the existing Municipal Code and to provide clearer directions in responding to bid protests.

Status Update: Please see Exhibits B and D for detailed proposed revisions to Municipal Code. The CAO is also drafting revisions to Council Policy 000-29 to reflect the proposed changes to Municipal Code.

2. Regional Procurement Cooperation Program

The City is an active member of the Regional Construction Procurement Committee (RCPC) formed several years ago to coordinate and improve procurement activities among the regional public agencies.

Staff is seeking authorization to develop agreements with other agencies such as SANDAG (San Diego Association of Governments) to assist in the awarding of CIP Contracts during peak demand to speed up contract awards.

Status Update: At a later date, staff plans to bring forward inter-agency agreements and possibly proposed modifications to the Municipal Code allowing procurement cooperation among RCPC member agencies (to the extent possible under City's Charter). Procurements under this program will be subject to City's or Agency's EOCP (Equal Opportunity Contracting Program) requirements; whichever stricter.

D. CIP TRANSPARENCY

The Committee also requested staff to enhance the CIP transparency for Council, stakeholder organizations, and the public. Following are specific proposals that staff believe can be accomplished within existing resources provided the CIP Streamlining measures mentioned in this report are adopted:

1. More Robust Budget Process

During the budget process staff will provide a high-level, full report and presentation on the status of all CIP projects covering both milestones completed and expenditures. Staff will also cover the accomplishments for the current fiscal year. Finally, staff will present next fiscal year's proposed CIP Budget highlighting new projects added to the budget, projects targeted for award in that fiscal year and a list of unfunded or underfunded proposed projects to receive funds from future project savings.

2. Online CIP Information

Staff will post CIP listings with project type (e.g., water, sewer, deferred capital), data (e.g., scope, schedule, location, progress, financing), and EOCP subcontracting participation results on a City dedicated website for CIP.

The categories for presenting the information will include:

- a) Organized by Council District
- b) Organized by Fund Sources
- c) Organized by Asset
- d) EOC results and Equal Opportunity participation

Status Update: Staff is setting up a prototype website, identifying the data sources, and designing project listings. With Council approval of all these streamlining measures, the CIP website will be up and running in calendar year 2012 and updated every quarter. While the website is being constructed, staff will coordinate with Council offices to provide hard and/or electronic copies of the reports.

3. Council Notification of CIP Project Awards

Consistent with the IBA (Independent Budget Analyst) recommendation, staff will clearly identify a list of projects that will go to bid during the fiscal year.

Status Update: Staff is setting up an internal SharePoint site with a listing of all construction and consultant contracts advertised and awarded and the pertinent data e.g., EOCP results. With Council approval of all these streamlining measures, we expect the site to be up and running in calendar year 2012. The SharePoint will automatically notify Council offices of projects awarded via City's e-mail system quarterly. While the SharePoint site is being constructed, staff will coordinate with Council offices to provide hard and/or soft copies of the reports.

4. State of the CIP

IBA has also recommended regular CIP Program updates to City Council.

Status Update: Staff will provide semi-annual presentations/reports to Budget & Finance Committee covering the state of the CIP beginning in January 2013. Additional financial information is also being developed for incorporation in the proposed and annual CIP budget documents.

IBA also provided some additional recommendations addressing Council including:

1. Undergo a review of all the projects in the CIP document to ensure that the projects will realistically be started in the next 5 years.
2. Dedicate more time during the annual budget hearing process for CIP review.
3. Council should consider direct docketing to full City Council for CIP Projects (no Committee hearing required).

Status Update: These recommendations are all supported by staff and we will work with the IBA to implement.

E. CONCLUSION

The Public Works Department would like to thank the Committee members for their forward thinking and unanimous support of streamlining the CIP process. Staff has been very excited about the proposed streamlining.

These recommendations have been discussed with various stakeholder groups e.g., CIPRAC, EOC, CAO, CEOC (Citizens' Equal Opportunity Commission), IROC (Independent Rates Oversight Committee), and the contracting community. The CEOC held a special meeting on January 18, 2012 to review and discuss the impacts of the proposed process on Equal Opportunity Contracting. They have provided their input in a letter to the Committee. Additional public outreach will be conducted to ensure a broad base of stakeholders is provided an opportunity to review and comment prior to presenting the item to City Council.

These recommendations are crucial to the streamlining of the CIP and consistent with many recommendations listed in the *CIP Performance Audit Report* of 2011. They will also help the department expedite the implementation of the second deferred capital bond that is expected to be considered by Council in the near future. With the implementation of these process changes, significant savings of time and money would be realized.

Therefore, we are respectfully seeking your final concurrence and support to move forward and implement the recommendations. Specifically; the following actions are respectfully being requested:

1. Immediate Committee Actions

Please forward the proposed Municipal Code modifications for recommendations described under sections B(1), B(2), B(3), B(5), and C(1) which are listed as follows to City Council for approval:

- B(1): Allow Council's approval of the CIP budget to replace the need for individual council approvals for the awarding of design and construction contracts for each item in the CIP budget; only projects not previously approved by Council in the CIP budget would need to be brought to Council for approval.
- B(2): Adjust current approval thresholds and add an additional threshold for the acquisition of Easements.
- B(3): Modify Municipal Code to allow for design-build Multiple Award Construction Contracts (MACC).

B(5): Reconcile Council Policies 600-24 and 600-33 as they relate to park projects.

C(1): Bid Protest Process Clarification.

2. Future Committee Actions

a) Please forward the proposed Land Development Code modifications for recommendation described under section B(4) and the inter-agency agreements for recommendation described in section C(2) to City Council for approval once they are received from staff (after sufficient public outreach):

B(4): Modify the Land Development Code as it relates to Site Development Permits for CIP projects.

C(2): Regional Procurement Cooperation.

b) Please review and approve recommendation described in section B(6) as part of the FY13 budget process:

B(6): Authorize Mayoral approval to transfer project savings at project completion to other projects.

c) Please implement IBA's recommendations described in sections D(3)(b) and D(3)(c):

D(3)(b): Dedicate more time during the annual budget hearing process for CIP review.

D(3)(c): Council should consider direct docketing to full City Council for CIP Projects (no Committee hearing required).



Tony Heinrichs

Director

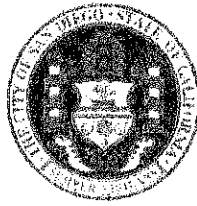
Public Works Department

Attachments:	Exhibit A:	Public Works Department's Report Dated 11/02/11
	Exhibit B:	Revisions to Chapter 2, Article 2, Division 30
	Exhibit C:	Revisions to Chapter 2, Article 2, Division 31
	Exhibit D:	Revisions to Chapter 2, Article 2, Division 32
	Exhibit E:	Revisions to Chapter 2, Article 2, Division 33
	Exhibit F:	Revisions to 600-24
	Exhibit G:	Revisions to 600-33

Note: Due to the large number of markups, Exhibits B through E consist of both "final" and "final showing markups" versions.

cc:

CIPRAC Membership



THE CITY OF SAN DIEGO

REPORT TO BUDGET AND FINANCE COMMITTEE

DATE: November 2nd, 2011
TO: Honorable Committee Chair and Members
FROM: Tony Heinrichs, Director - Public Works Department
SUBJECT: Streamlining CIP and Contracting Improvements

RECOMMENDATION:

The City of San Diego's Capital Improvement Program (CIP) is implemented through an interrelationship of client departments, service departments, consultants and contractors. Actions necessary to complete these projects are governed by approvals and processes administered through Council Authority and/or Mayoral Authority. Public Works Department staff has recently implemented several changes to improve the cost, time and or quality needed to complete projects pursuant to the Mayor's authority to administer these processes. In addition, staff has identified several Municipal Code and Council Policy changes that, if authorized by Council, would improve staff's ability to implement the CIP in a timely manner. These recommended changes consist of:

1. Allow the approval of the CIP budget to replace the need for individual council approvals for each project in the CIP budget; only projects not in the CIP budget would need to be brought to Council for approval.
2. Adjust current approval thresholds and add an additional threshold for the acquisition of Easements.
3. Modify the Municipal Code to allow for Multiple Award Construction Contracts.
4. Modify the Land Development Code as it relates to Site Development Permits for CIP projects.
5. Reconcile Council Policies 600-24 and 600-33 as they relate to park projects.
6. Authorize automatic transfers of project savings at project completion to other projects.

These recommendations would require specific modifications to the Municipal Code and Council Policies, but if implemented many projects could shave between 6 and 12 months off the entire process and save between \$10,000 and \$100,000 depending on how the individual project is impacted by the changes implemented.

BACKGROUND:

In 2006 and following the Kroll audit report, the City completed a Business Process Reengineering (BPR) effort that resulted in the consolidation of City-wide procurement efforts into a centralized Purchasing & Contracting (P&C) Department and the management of most CIP projects into the Public Works (ECP) Department. These reorganizations resulted in staff reductions of 89.5 positions for an annual savings of \$7,507,000. Despite the positive results of these BPR's and other initiatives conducted since, concerns persist regarding the cost and length of time required to implement CIP projects.

The recent CIP Performance Audit report issued in June 2011 and the Public Utilities CIP Audit issued in September 2011 summarize contracting initiatives that are being implemented to improve the management of CIP projects. One example of recent improvements is a set of changes to the City's contracting processes following the Public Works contracting responsibilities being transferred to the Public Works Department in July of this year.

A number of short and long term adjustments have been completed and other recommendations are being implemented to further reduce the time needed to award contracts. Staffing levels have been adjusted, the Purchase Requisition process has been streamlined, adjustments to the frequency of addenda has been implemented, and other changes have materially shortened the time required to award contracts.

Following is a list of specific changes that followed the Mayor's announcement of the contracting transfer:

Changes Implemented

1. Define process map, timelines, and ownership for all phases of bidding and award.
2. Improve follow-ups.
3. Improve communication between staff from various offices involved in the process.
4. Post contract information online for all to see therefore; reducing inquiries and interruptions.
5. Improve and promote a teamwork environment (i.e., One City) encouraging positive attitude towards customer service and establish a reward and recognition program.
6. Address bid rejection and protest issues that congest the system expeditiously and carefully using a peer review process.
7. Minimize the number of contract modifications via Addenda that have been congesting the system.

8. Simplify and clarify bid forms and minimize required information.
9. Granting Contracting Authority to the PW Department.
10. Define and clarify staff roles and responsibilities.
11. Fast track starting 1 new Contract Specialist and kick-start filling 3 other critical vacancies.
12. Develop a consolidated user friendly and simple database for logging in and tracking contracts.
13. Streamline Purchase Requisition/Order process.
14. Establish performance metrics and conduct regular weekly meeting to measure progress.
15. Eliminate outdated activities that add no values.

Changes In Progress

1. Streamline insurance submittals and review:
 - a) Improve services provided by the insurance review contractor.
 - b) Simplify Contract Documents.
 - c) Train staff and simplify review process.
 - d) Enforce the "10 day" time period for delivery of bonds and insurance.
2. Develop electronic tracking system for the entire process.
3. Develop electronic tracking system for action documents e.g., PA2625.
4. Implement full service online bidding.
5. Simplify contract documents reducing preparation time and easing review by bidders.
6. Implement 20 day posting period for bids.
7. Issue the Notice to Proceed to the contractor upon award of the contract.
8. Develop process narrative and other SOPs.
9. Online full service electronic bid submission.

Improvements to the process are demonstrated in the table below which provides a summary of the conditions as of July 2011 and the subsequent progress made.

	13-Jul	23-Aug	13-Sep	04-Oct
Contracts In Award Phase	62	28	22	24
Average Time From Bid Opening to Award (days)	120	115	90	60

These improvements were noted in a recent article written by the Associated General Contractors of America, San Diego Inc. which reported "It's been awhile since we provided an optimistic view of the City of San Diego's construction program, but with some recent

and upcoming developments we thought it would be an appropriate time to share some good news...Mayor Jerry Sanders listened to us and reorganized the Purchasing and Contracting Department into the City's Public Work Department.... The change already seems to be paying off, as the bid to NTP timeframe has shortened quite a bit."

DISCUSSION:

Staff has identified several Municipal Code and Council Policy changes that, if authorized by Council, would improve staff's ability to implement the CIP. These recommended changes consist of:

- 1. Allow the approval of the CIP budget to replace the need for individual council approvals for each project in the CIP budget; only projects not in the CIP budget would need to be brought to Council for approval.**

Currently, Council must approve the award of all CIP related construction contracts over \$1,000,000 when budgeted in the CIP. In other words, departments are generally required to obtain City Council approval for larger CIP projects at least twice; first when the project is initiated in the budget and subsequently each time a contract is awarded that exceeds the threshold.

The 2007 Engineering Services BPR recommended making it a 1-step process so that project schedules are not interrupted by the Council award process. Simplifying the process would speed procurement by 1 to 3 months that are now required to obtain Council authority to award contracts. This process was discussed on page 37 of the CIP Performance Audit Report which described the process as lengthy and complicated and stated that "By not identifying the actual cost and benefits of taking things to Council, such as assessing City staff time and Council staff time and the impact of the docketing process, the City cannot ensure that projects will be completed on time. By not assessing and streamlining required processes, the City cannot ensure that funds will be spent effectively and efficiently."

- 2. Adjust current approval thresholds and add an additional threshold for the acquisition of Easements.**

Council contract approval thresholds have not changed since 1998 with the exception of the limit for the minor construction contract which has been increased from \$250,000 to \$500,000 based upon the implementation of the Small/Emerging Local Business Enterprise Program. As time has passed and inflation has occurred project costs have increased resulting in Council having to approve a relatively larger number of contracts.

In addition to recommending adjustments to the existing thresholds, we recommend carving out a new threshold regarding the current easement acquisition process. Currently, CIP projects require Council approval for any easement regardless of size. This is a time consuming step especially for the majority of cases where a simple acquisition with small expenditure is all that is needed. A recommended threshold of

\$100,000 is recommended to cover minor easements that are required. Large projects involving multiple acquisitions, in depth appraisals, etc. will still continue to be brought to Council for the acquisitions, including all with the potential of eminent domain.

Recommended threshold increases for awarding contracts if they are budgeted in the CIP are summarized as follows:

Type of Contract	Current Threshold	Recommended Threshold
Consultants agreements	\$250,000	\$1,000,000
Public works projects – Contract amount	\$1,000,000	Amount authorized in the approved CIP/budget
Public works projects – Change Order limit	\$200,000	\$500,000 or as authorized in the approved CIP/budget (whichever is higher)
Public works projects - GRC Tasks	\$500,000	\$1,000,000
Easements for CIP	\$0	\$100,000

By implementing the new approval thresholds:

- a) Contract awards will be fast-tracked by an additional 1 to 3 months (for each adjustment noted above), getting jobs-generating projects out the door.
- b) Council can focus on the CIP budget during the annual budget process and provide adequate comprehensive oversight throughout the year, without delaying much needed infrastructure projects they have already approved; staff can provide semi-annual progress updates to Council and focus on getting projects out rather than preparing the paperwork for approximately 10 projects needing Council action monthly.
- c) Council approves the entire budget for a CIP project and no additional funds can be expended without further Council approval.
- d) The time required to execute Construction Change Orders over \$200,000 can lead to significant increases to project delivery costs and should be reserved only for cases where the overall project budget must be adjusted.

3. Adopt the use of Multiple Award Construction Contract (MACC).

The MACC program would be a variation of the current As-Needed Design-Build process. While the draft ordinance has not been written and the final recommendation fully developed, the process will save time. The recommendation to allow a MACC process would require an amendment to the Municipal Code. The issuance of contracts would put in place all the insurance and bonds necessary to award each task which is estimated to save three to four weeks from the current award process. In addition by authorizing the Mayor to award task orders, the new process will reduce the time needed for Council approval of each project by an additional 1 to 3 months. Both time savings will shorten project schedules by 2 to 4 months and will result in cost savings in excess of \$10,000 for each project.

Finally the use of a MACC would reduce the number of contracts being processed allowing the contract award staff to focus on other contracts. The reduction of the total contracts being processed through the system will reduce the time needed to award other contracts in the system. Please see the accompanying memo specifically drafted to elaborate on this recommendation.

4. Modify the Land Development Code as it relates to the requirement of Site Development Permits for CIP projects.

Currently, the Land Development Code (LDC), Chapters 11, 12, 13, and 14 of the San Diego Municipal Code set forth the procedures used in the application of land use regulations. An element of the LDC is the Site Development Permit which establishes a review process of proposed developments that may impact Environmentally Sensitive Lands (ESL) and/or historic resources.

This process, however, is oftentimes duplicative and mirrors the California Environmental Quality Act (CEQA) project specific impacts analysis each public project must complete. During CEQA review, projects are assessed as to their compliance with the LDC, in particular the ESL regulations regarding biology, steep hillsides, coastal bluffs and beaches, as well as historic/cultural resources, Multiple Species Conservation Program compliance, community plans, the general plan and a multitude of additional sensitive resources. In fact, it is intended that the Development Regulations for ESL and associated Guidelines in the Land Development Manual for those resources serve as a standard for the determination of impacts and mitigation under CEQA and the California Coastal Act. Therefore, once CEQA is complete the SDP usually reiterates what is outlined in the CEQA document and its associated mitigation measures.

In addition, public projects currently require multiple layers of public input and review prior to consideration and adoption of a CEQA document, in addition to coordination and permitting with State and Federal Regulatory Agencies if ESL is to be impacted. The additional burden of obtaining a SDP is often very time consuming and costly with limited additional benefit to the public, project or environment. Presently, there are many exemptions to SDPs for public projects which have helped to streamline and

reduce the cost of implementing the CIP program, such as linear utility projects, public works projects that have been approved by the City Council before July 1, 1991, habitat restoration, brush management, trails, and site reconnaissance and testing.

Exempting all essential public works projects, including publicly owned parks and recreation facilities, fire and police stations, publicly owned libraries, public schools, major streets and primary arterials, and public utility systems would provide a significant improvement in the delivery of our CIP program. At a minimum, emergency projects that are exempt from CEQA which may only require an after the fact SDP, any CEQA exempt project, and any projects that are in compliance with the ESL, have impacts below the City's CEQA significance thresholds for sensitive resources and do not require mitigation should be exempt from the SDP process.

5. Reconcile Council Policies 600-24 and 600-33 clarifying the appropriate reviewing entity for official recommendations on park projects and modify the Land Development Land Code to reflect the clarification.

Currently most CIP projects are subject to a variety of public outreach processes. City and State Development Permits, Resource Agency Permits, the CEQA and the National Environmental Policy Act (NEPA) all have processes for noticing stakeholders and seeking input. Council Policies 600-24 and 600-33 contain provisions for providing community input on projects that result in unclear recommendation-making authority for park projects. Council Policy 600-24 identifies responsibilities of recognized community planning groups, which includes the review of individual development projects for consistency with the adopted community plan, and Council Policy 600-33 assures that community members have adequate opportunity to participate in the design phase of park development projects.

Delays to project schedule and increased project costs have occurred as a result of park projects having to undergo separate review processes by recognized community planning groups per Council Policy 600-24 and Park and Recreation Board committees per Council Policy 600-33. When the desires and recommendations of the different committees conflict, it has significantly exacerbated the problem, requiring multiple meetings in an attempt to reconcile recommendations. One recent park project resulted in 20 noticed public meetings at a cost of approximately \$2000 per meeting before reaching a conclusion.

Since park development projects are implementing the recommendations of the community plans, and Council Policy 600-33 already requires that the Planning group be notified and invited to attend the Park Recreation Council meeting for input and recommendations, we recommend that Council Policy 600-24 be amended to reflect that review of these park projects will be provided through the Park and Recreation Board processes per Council Policy 600-33. Section 112.0301 (a)(1)(C) of the Municipal Code should be modified to reflect the appropriate reviewing body and contact person.

6. Authorize transfer of project savings at project completion to other projects

When a project is completed, all remaining funds are returned to fund balance. Those funds cannot be reprogrammed until the next budget cycle or through City Council action. As a result, the funds sit unused for a period of time. If those funds could be reprogrammed administratively to other existing projects already approved in the CIP budget and eligible for the same funding source, the project receiving the funds could be accelerated.

CONCLUSION:

These recommendations would require specific modifications to the Municipal Code and Council Policies described above. With the implementation of these process changes, significant savings of time and money would be realized. The increase in Mayoral thresholds and addition of a MACC contract would reduce the time needed to issue contracts by several months. Allowing Land Development Code change would eliminate duplicative and costly processes. By authorizing the Mayor to reallocate excess project funds at project completion other projects would be expedited. The effort to draft these Municipal Code ordinances and Council Policies changes will require a process to more fully develop the recommendation and solicit input from stakeholders.

These recommendations are crucial to the streamlining of the CIP and ensuring that critical jobs-generating projects are implemented as soon as possible. The Public Works Department is respectfully seeking concurrence and support to move forward with a process to fully develop these recommendations.

FOR


Tony Heinrichs

Director of Public Works Department

cc: James Nagelvoort, Acting City Engineer--Public Works Department

Article 2: Administrative Code**Division 30: Contracting Definitions and Procedures**
*("Contract Definitions, Competitive Bidding Procedures, and
Contract Alterations" added 6-29-1998 by O-18532 N.S.)***§22.3001 Purpose and Scope of Division**

The purpose of this Division is to provide uniform definitions for Divisions 30, 31, 32, 33, 34, 35, and 36 of Article 2, Chapter 2 of the Municipal Code; to establish general requirements that apply to contracts awarded under those same Divisions; and to provide clarity and consistency in the City's alteration of contracts.
(Retitled from "Purpose and Intent; Scope of Division" and amended 9-3-2002 by O-19095 N.S.)

§22.3002 Relationship to State Law

- (a) Pursuant to Section 1100.7 of California's Public Contract Code, the City Council declares that the City's Public Contracts Code, or any portion thereof, is expressly exempt from the California Public Contracts Code.
- (b) In the interest of ensuring an expeditious and fair procedure for administering the award of its public contracts, the City in its discretion may follow portions of the California Public Contract Code, but absent a judicial finding that a particular aspect of local public contracting is a matter of statewide concern, the City is not required to do so.
(Amended 9-3-2002 by O-19095 N.S.)

§22.3003 Definitions

Terms defined in Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, and 36 are indicated by italics. For purposes of Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, and 36:

Agency means federal and state agencies, counties, cities, districts, local agencies, joint power authorities, non-profit corporations wholly owned by a public agency, and any quasi-public entity that the Council may designate by resolution.

Award date or date of award means the date that the City Manager or his or her designee signs the contract and all conditions precedent to award have been satisfied.

Bidder means a person or firm who submits a bid, proposal or other document to the City seeking award of a contract. A *bidder* does not include a subcontractor.

City's Public Contracts Code means the City's Charter, Municipal Code, Council policies, administrative regulations, past practices, current practices, or any portion of those laws, policies, regulations, or practices, pertaining to contracts or agreements between the City and other party.

Consultant contract means a contract to provide expert or professional services including, but not limited to, accounting, architectural, engineering, marketing, public relations, management, financial, and legal services..

Contract for goods means a contract for the purchase of articles, commodities, materials, supplies, equipment, or insurance.

Contract for inmate services means a contract for the use of inmates confined in federal, state or county prisons, or probationers, or parolees.

Contract for services means a contract to provide assistance, labor or *maintenance*. A *contract for services* does not include *consultant contracts*, *contracts for goods*, or *public works contracts*.

Cooperative procurement contract means a contract to obtain goods or services for at least two *agencies*.

Job order contract means a *public works contract* awarded on a unit cost basis for all necessary labor, materials, and equipment pursuant to San Diego City Charter Section 94.1.

Maintenance means routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

Major public works contract means a *public works contract* valued at more than \$500,000.

Minor public works contract means a *public works contract* valued at \$500,000 or less.

Public works contract means a contract for the construction, reconstruction or repair of public buildings, streets, utilities and other public works, including design-build contracts, construction manager at risk contracts, and *job order contracts*.

Responsible means a *bidder's* quality, fitness, and capacity to perform the particular requirements of the proposed work.

Sole source contract means a contract awarded without competitive selection or bidding.

Task order means an authorization to perform public works issued under a *job order contract* or a multiple award design-build contract under Section 22.3310.

(Amended 9-3-2002 by O-19094 N.S. and O-19095 N.S.)

(Amended 1-24-2005 by O-19353 N.S.)

(Amended 2-4-2010 by O-19922 N.S.; effective 7-1-2010.)

§22.3004 Contractor Standards

- (a) Prior to awarding a contract greater than \$50,000, the City shall make a determination that the *bidder* has the capability to fully perform the contract requirements and the business integrity to justify the award of public funds. The factors the City may consider include, but are not limited to:
- (1) Financial resources, including financial sufficiency under California Labor Code Section 2810;
 - (2) Technical qualifications;
 - (3) Experience;
 - (4) Material, equipment, and expertise necessary to carry out the work;
 - (5) A satisfactory record of performance; and
 - (6) A satisfactory record of compliance with applicable statutes and regulations.
- (b) *Bidders* are required to submit documentation, under penalty of perjury, to determine if the *bidder* meets the standards set forth in Section 22.3004(a). To be eligible to bid on *public works contracts*, *bidders* must submit the documentation as part of a prequalification process adopted by the City Manager, and be approved prior to bidding on a *public works contract*. For *contracts for goods*, *contracts for services*, and *consultant contracts*, the documentation may be submitted as part of the *bidder's* bid, proposal, or other application for a contract.
- (c) During the term of a contract, the contractor shall comply with all applicable local, state and federal laws, including health and safety, labor and employment, and licensing laws, that affect the employees, worksite or performance of the contract. Each contractor shall notify the City within fifteen calendar days upon receiving notification that a government agency has begun an investigation of the contractor that may result in a finding that the contractor is or was not in compliance with said laws, or that there has

- been a finding by a government agency or court of competent jurisdiction of a violation of such laws by the contractor. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by the City.
- (d) Upon award, amendment, renewal, or extension of a contract, all contractors shall complete a pledge of compliance attesting under penalty of perjury to compliance with this Section. Only one pledge of compliance is required for each contract. Contractors shall ensure that their subcontractors whose subcontracts are greater than \$50,000 in value complete a pledge of compliance attesting under penalty of perjury to compliance with this Section.
- (e) Violations of this Section may be reported to the City Manager who shall investigate such complaint. Whether based upon such complaint or otherwise, if the City has determined that the contractor has violated any provision of this Section, the City shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the City Manager may do one, all, or any combination of the following:
- (1) Declare a material breach of the contract and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the contract.
- (2) Declare the contractor to be non-responsible in accordance with the procedures set forth in Section 22.3004(f).
- (3) Debar the contractor pursuant to Chapter 2, Article 2, Division 8 of this Code.
- (f) A bidder who is denied the award of a contract because the bidder is not considered to be responsible may contest the City's determination pursuant to the bid protest provisions in Section 22.3017(b). A bidder who is determined to be non-responsible and ineligible to bid on public works contracts as a result of the prequalification process may contest the City's determination pursuant to this Section.
- (1) Before declaring a contractor non-responsible, the City Manager shall notify the contractor of the proposed determination of non-responsibility, serve a summary of the information upon which the determination is based, and provide the contractor with an opportunity to be heard in accordance with applicable law. Upon request, the contractor is entitled to a hearing before the City Council's Budget and Finance Committee. At such hearing, the contractor will be allowed to rebut adverse information and to present evidence that the contractor has the necessary quality, fitness and capacity to perform the work. The Budget and Finance Committee shall make a determination upholding or rejecting the City Manager's declaration, and shall

forward its determination to the City Council for review and approval or rejection. A determination by the City Council shall be final and constitute exhaustion of the contractor's administrative remedies.

- (g) The City Manager shall maintain a list of contractors that have been determined to be non-responsible by the City. After two years from the date the contractor has been determined to be non-responsible, the contractor may request removal from the list by the City Manager. If the contractor can satisfy the City Manager that the contractor has the necessary quality, fitness, and capacity to perform work in accordance with the criteria set forth in Section 22.3004(a), its name shall be removed from the list. Unless otherwise removed from the list by the City Manager, names shall remain on the list for five years from the date of declaration of non-responsibility.
- (h) This Section applies to public works contracts, contracts for goods, contracts for services, and consultant contracts.

(Added 5-24-2005 by O-19383 N.S.)

(Amended 11-24-08 by O-19808 N.S; effective 12-24-2008.)

§22.3005 Insurance and Bonds May Be Required

The City is authorized to require vendors, consultants and contractors to provide insurance and surety bonds for contracts. Where required, the bidder shall submit proof of insurance or surety bonds, or both, acceptable to the City prior to award. The City may award a contract to the next *bidder* that meets all requirements when the winning *bidder* does not meet deadlines for submitting acceptable bond and insurance documents.

(Retitled from "Insurance and Bonds May be Required" and amended 9-3-2002 by O-19095 N.S.)

§22.3006 Issuance of Specifications for Contracts Requiring Bidding

For contracts requiring bidding under divisions 30 through 36, and 38 of Chapter 2, Article 2 of this Municipal Code:

- (a) The City will issue specifications describing the goods, services, public works, or consultant services to be procured.
- (b) Bidders are responsible for carefully examining the specifications and all provisions relating to the items to be furnished or the work to be done. Failure to respond as requested may result in rejection of a bid.
- (c) The City shall issue invitations to bid or requests for proposals for public works, materials, supplies, equipment, services, consultants, insurance and other public contracts required for the City.

(Retitled from "Issuance of Specifications" and amended 9-3-2002 by O-19095 N.S.)

§22.3007 Use of Brand Name in Specifications

- (a) Any reference to a specific brand name in specifications is illustrative only. A reference to a brand name describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
- (b) A *bidder* may offer an equivalent ("or equal") in response to a brand name reference. When an "or equal" is offered, the City may test and evaluate the product at the *bidder's* sole cost and expense. If a bidder refuses to pay to test or evaluate the "or equal" and refuses to provide the brand name specified prior to award of the contract, the City may reject the bid.
- (c) At *bidder's* expense, *bidder* bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal." At *bidder's* expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.
- (d) The City reserves the sole right to reject a bid containing any "or equal" offered.
- (e) The City may specify when an "or equal" will not be considered or accepted where necessary for compatibility with existing City equipment or systems, to reduce the different types of spare parts held in City inventory, or where patents or other intellectual property rights preclude acceptance of an "or equal."

("Use of Brand Name in Specifications; Offers of "Or Equals"; Testing"
added 6-29-1998 by O-18532 N.S.)

§22.3008 Invitations to Bid, Requests for Qualifications and Proposals

- (a) An invitation to bid shall be issued for contracts awarded on the basis of lowest bid. The invitation to bid shall include specifications that describe the public works, material, supplies, equipment, services, consultants or insurance with sufficient particularity to allow for competitive bidding and evaluation. The specifications shall also describe the functions and performance that are required and any applicable operational limitations or parameters.
- (b) A request for proposals shall be issued for contracts awarded on a basis other than lowest bid. The request for proposals shall include specifications that describe the public works, material, supplies, equipment, services, consultants or insurance with sufficient particularity to allow for competitive bidding and evaluation. The specifications shall also describe the functions and performance that are required and any applicable operational limitations or

parameters. The request for proposals shall include a description of the evaluation criteria and the process the City will use to determine the winning proposal.

- (1) The City may negotiate the terms of a contract with the winning *bidder* based on the request for proposals and *bidder's* proposal, or award the contract without further negotiation. For requests for proposals that do not require the bidder to propose a contract price, if the City and the winning *bidder* fail to agree on a price, the City may reject the winning *bidder's* proposal and enter into negotiations with the *bidder* with the next best proposal.
- (c) The City may issue a request for qualifications or other document to determine the interest of potential bidders or to shortlist or prequalify the field of bidders eligible to submit bids or proposals.

(Amended 9-3-2002 by O-19095 N.S.)

§22.3009 Timely and Responsive Submission of Bids and Proposals

To be eligible for consideration, bidders are required to submit responsive bids and proposals to the City on or before the bid closing deadline set by the City. The City may consider a bid or proposal that was submitted before the bid closing deadline via a delivery medium such as the U.S. mail, even though the bid or proposal arrives after the bid closing deadline, provided the City finds that acceptance of the bid or proposal is in the best interests of the City and there is no possibility of collusion or fraud in the procurement process.

("Timely and Responsive Submission of Bids and Proposals" added 6-29-1998 by O-18532 N.S.)

§22.3010 Addenda to Specifications

- (a) The City may issue addenda to the specifications where necessary. All addenda shall be considered to be incorporated into the contract.
- (b) Prior to bid submission, each bidder is responsible for determining whether addenda were issued prior to bid submission. Failure to respond to addenda may result in rejection of a bid.

("Addenda to Specifications" added 6-29-1998 by O-18532 N.S.)

§22.3011 Bid Opening

- (a) Invitations to bid shall indicate the date, time, and location where bids will be opened. The location of the bid opening shall be a place open to the public.
- (b) Substantial compliance with all of the following provisions renders the bid opening valid for all purposes:

- (1) All bids will be opened at, or immediately after, the time noticed for the bid opening.
 - (2) No bidder or interested person will be excluded from the bid opening.
 - (3) Where no member of the public is in attendance, at least one City officer or employee, in addition to the City employee opening the bids, will be present.
 - (4) Bids will be unsealed and opened in the presence of those attending.
 - (5) The name of the project will be audibly announced to those present followed by the name of the bidder, the name of the surety, the amount of the bond, and the total amounts or unit amounts bid.
- (c) Any person present shall have the right to ask the announcements be repeated or to ask that omitted data be supplied. Such requests will be honored to the extent they do not unreasonably delay or interfere with the bid opening procedure, as determined in the sole discretion of the City employee opening bids.
- (d) Proposals received in response to a request for proposals may be opened at a public bid opening at the discretion of the City Manager.
("Bid Opening" added 6-29-1998 by O-18532 N.S.)

§22.3012 Bid Opening Exceptions

- (a) In the event of public calamity or some unforeseen event (including an unusually large number of people in attendance) that renders it impossible or highly impracticable to open the bids at the time and place specified, the City may change the date, time and location without invalidating the bid opening.
- (1) A sign will be continuously posted at the original location, giving notice of an alternate location of the bid opening, from the time of the public calamity or unforeseen event until completion of the alternate bid opening. An officer or employee of the City will remain by the sign to answer inquiries. Not less than one-quarter hour nor more than one hour after the originally specified time for the opening of bids, the bids may be opened in the alternate location.
 - (2) If it is impossible or impracticable to use the procedure under Section 22.3012(a)(1), the bids will either be returned to the bidders or be held unopened for a period of forty-eight hours. After forty-eight but not later than seventy-two hours after the originally specified time and place of the bid opening, bids may be opened at any hour, provided that every reasonable means has been taken to notify the respective bidders of the alternate time and place of the bid opening.

("Bid Opening Exceptions" added 6-29-1998 by O-18532 N.S.)

§22.3013 Withdrawal or Modification of Bid or Proposal After Bid Opening

Any *bidder* who seeks to modify or withdraw a bid or proposal because of the *bidder's* inadvertent computational error affecting the bid or proposal price shall notify the City Department where bids or proposals were submitted no later than three working days following the bid closing. The *bidder* shall provide worksheets and such other information as may be required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the *bidder* to prove the inadvertent error.

("Withdrawal or Modification of Bid After Bid Opening" added 6-29-1998 by O-18532 N.S.)

§22.3014 Waiver of Defects and Technicalities

The City may waive defects and technicalities when to do so is in the best interests of the City.

("Waiver of Defects and Technicalities" added 6-29-1998 by O-18532 N.S.)

§22.3015 Rejection of Bids and Proposals

The City Manager may reject any and all bids or proposals when to do so is in the best interests of the City, and may re-advertise for bids or proposals.

§22.3016 City Manager's Certification of Sole Source Contract

(a) The City Manager may certify that a *sole source contract* is justified because strict compliance with competitive selection or bidding requirements would be unavailing, or would not produce an advantage, or would be undesirable, impractical, or impossible.

(b) The City Manager may delegate the *sole source* certification authority provided by section 22.3037(a) to the Assistant City Manager, Deputy City Manager, any Department Director, or an equivalent City officer.

("City Manager's Certification" added 6-29-1998 by O-18532 N.S.)

(Amended 1-24-2005 by O-19353 N.S.)

§22.3017 Protests of Contract Award

(a) A *bidder* who is not selected for contract award may protest the award of a contract to another *bidder* by submitting a written protest.

(1) For contracts awarded pursuant to an invitation to bid, the protest must be received by the City Department administering the contract award, no later than 5:00 p.m. on the tenth calendar day after the date of the bid opening.

(2) For contracts awarded pursuant to a request for proposals, the protest must be received by the City Department administering the contract award, no later than 5:00 p.m. on the tenth calendar day after the City

notifies the *bidders* which of them submitted the winning proposal. The City's notification may be by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), automated phone message or internet posting. The effective date of notice by mail is the date that the notice is deposited in the U.S. mail. The effective date of all other means of notice is the date it is transmitted.

- (3) If the tenth calendar day falls on a weekend or City holiday, the deadline to submit a protest shall be extended to 5:00 p.m. on the first business day following such weekend or holiday.
- (b) A *bidder* who is denied the award of a contract because the *bidder* is not considered to be *responsible* may contest the City's determination by submitting a written protest.
 - (1) The protest must be received by the City Department administering the contract award no later than 5:00 p.m. on the tenth calendar day after the City notifies the bidder it is not a *responsible bidder*. Notification may be by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), automated phone message or internet posting. The effective date of notice by mail is the date that the notice is deposited in the U.S. mail. The effective date of all other means of notice is the date it is transmitted.
 - (2) A *bidder* may request a hearing to present evidence contesting the City's determination that it is not a *responsible bidder*. The protest hearing shall be conducted in accordance with Council Policy 000-29. The request for a hearing must be made in writing and submitted with the *bidder's* protest.
 - (3) A *bidder* requesting a hearing shall submit a bid protest bond with the *bidder's* protest in any of the following forms: a surety bond from a California licensed surety, an irrevocable standby letter of credit, certified check, cashier's check or money order, made payable to the City of San Diego. The bid protest bond shall be in the following amounts:

Contract Value (\$)	Bond Amount
Less than 250,000	\$ 5,000
250,000 – 1,000,000	\$10,000
Greater than 1,000,000	\$25,000

- (4) If the City's determination that the *bidder* is not *responsible* is affirmed by the hearing officer or panel, the *bidder* shall be assessed the City's costs of the protest hearing if the hearing officer or panel concludes the *bidder's* protest was without merit, or brought for the purpose of delaying the award of the contract. The *bidder* shall then pay the assessed costs within thirty days of receipt of an invoice from the City. If the *bidder* fails to pay within thirty days, the City may

deduct the assessed costs from the bid protest bond provided by the *bidder*.

- (c) The protest must be identified as a "bid protest" in the subject line or title of the document, and shall clearly state all legal and factual grounds claimed for the protest. Any grounds not raised in the written protest are deemed waived by the *bidder*.
- (d) The City shall not award the contract being protested until after the City issues a written decision on the bidder's protest. The City's written decision shall be final and exhaust the *bidder's* administrative remedies.
- (e) The procedure and time limits set forth in this Section are mandatory and are the *bidder's* sole and exclusive remedy. Failure to comply with these procedures and time limits shall constitute a waiver of any right to further pursue a protest.
- (f) The *bidder's* filing of a protest shall not preclude the City Manager from rejecting all bids and re-advertising a contract.

(Amended 9-3-2002 by O-19094 N.S.)

(Amended 1-24-2005 by O-19353 N.S.)

§22.3018 Alterations in Contracts

- (a) For *major public works projects* previously approved and appropriated through the Annual Capital Improvements Program (CIP) budget, the City Manager is authorized to make alterations without City Council approval provided that:
 - (1) The cost of each alteration does not increase the contract amount by more than \$500,000; and
 - (2) The cost of the alterations do not cause the project to exceed the total amount authorized for the project by ordinance or resolution; and
 - (3) The alterations are necessary to fulfill the purpose of the contract; and
 - (4) The alterations are made by agreement in writing between the contractor and the City.
- (b) For all other contracts, the City Manager is authorized to make alterations without City Council approval provided that:
 - (1) The cost of each alteration does not increase the contract amount by more than \$200,000; and
 - (2) The cost of the alterations do not cause the project to exceed the total amount authorized for the project by ordinance or resolution; and
 - (3) The alterations are necessary to fulfill the purpose of the contract; and
 - (4) The alterations are made by agreement in writing between the contractor and the City; and

- (5) The cost of the alterations do not cause the project to exceed the amount of City Manager's authority to award contracts without City Council approval established in this Chapter.

*("Alterations in Contracts, Consultant Contracts, and Public Works Contracts"
added 6-29-1998 by O-18532 N.S.)
(Amended 1-24-20005 by o-19353 N.S.)*

Article 2: Administrative Code

Division 30: Contracting Definitions, Competitive Bidding and Procedures, and Contract Alterations

("Contract Definitions, Competitive Bidding Procedures, and Contract Alterations" added 6-29-1998 by O-18532 N.S.)

§22.3001 Purpose and Scope of Division

The purpose of this Division is to provide uniform definitions for Divisions 30, 31, 32, 33, 34, 35, and 36 of Article 2, Chapter 2 of the Municipal Code; to ~~provide a comprehensive, clear procedure for competitively bidding~~ establish general requirements that apply to contracts awarded under those same Divisions and public works contracts; and, to provide clarity and consistency in the City's alteration of contracts.

(Retitled from "Purpose and Intent; Scope of Division" and amended 9-3-2002 by O-19095 N.S.)

§22.3002 Relationship to State Law

- (a) Pursuant to Section 1100.7 of California's Public Contract Code, the City Council declares that the City's Public Contracts Code, or any portion thereof, is expressly exempt from the California Public Contracts Code.
- (b) In the interest of ensuring an expeditious and fair procedure for administering the award of its public contracts, the City in its discretion may follow portions of the California Public Contract Code, but absent a judicial finding that a particular aspect of local public contracting is a matter of statewide concern, the City is not required to do so.

(Amended 9-3-2002 by O-19095 N.S.)

§22.3003 Definitions

Terms defined in Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, and 36 are indicated by italics. For purposes of Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, and 36:

Agency ~~includes means the State of California~~ means federal and state agencies, counties, cities, districts, public authorities and local agencies, joint power agencies, authorities, public-non-profit corporations wholly owned by a public agency, and any other public or quasi-public entity that the Council may designate by resolution.

~~*Announcement* means the declaration of the intent to award a contract or a public works contract, by any means of transmission, including U.S. mailing, automated phone message or Internet posting. The effective date of an announcement by mail is the date that the announcement is deposited in the U.S. mail.~~

~~*Award* means the acceptance of a bid or proposal by the City's authorized representative.~~

~~*Award date* or *date of award* means the date that the City Manager or his or her designee signs the documents constituting a public works contract, contract, or consultant agreement, and all conditions precedent to award have been satisfied.~~

~~*Bidder* means a person or firm who submitted a bid, proposal or other document to the City seeking award of a contract, public works contract or consultant agreement. A bidder does not include a subcontractor.~~

~~*Brand Name* refers to a specific product in specifications for goods, services, or public works.~~

~~*City's Public Contracts Code* includes means the City's Charter, Municipal Code, Council policies, administrative regulations, past practices, current practices, or any portion of those laws, policies, regulations, or practices, pertaining to contracts or agreements between the City and other party.~~

~~*Consultant contract* includes means a providers of contract to provide expert or professional services including, but not limited to, accounting, architectural, engineering, marketing, public relations, management, financial, and legal services. and excludes providers of services.~~

~~*Contract* includes a contract for goods, a contract for services, or a cooperative procurement contract unless otherwise stated.~~

~~*Contract for gGoods* means an agreement between the City and another party in which the City is a contract for the purchaser of articles, commodities, materials, supplies, equipment, or insurance.~~

~~*Contract for iInmate sServices* means an agreement between the City and an Agency a contract for the use of inmates confined in federal, state or county prisons, or probationers, or parolees to perform services.~~

~~*Contract for sServices* means a contract to provide assistance, labor or maintenance, an agreement between the City and another party in which the City is the purchaser of services, excluding consultant services. It includes maintenance contracts. A contract for services does not include consultant contracts, contracts for goods, or public works contracts.~~

~~*Cooperative pProcurement cContract* means a contract entered into by the Purchasing Agent and another agency to obtain goods or services for at least two~~

~~agencies or an agency contract utilizing a bidding process that complies with City requirements.~~

~~Emergency~~ means an event of great public calamity, such as extraordinary fire, flood, storm, epidemic or other disaster.

~~Evaluation Team~~ means the City team (consisting of one or more members) assembled to review and evaluate bids and proposals.

~~General Requirements Contract~~ means a public works contract which contains a unit price book of detailed specifications and unit prices for typical tasks. Specific construction projects are not contemplated or authorized at the time of award. Work is authorized as required by a separate task order.

~~Goods~~ means any articles, commodities, materials, supplies, equipment, or insurance.

Job order contract means a public works contract awarded on a unit cost basis for all necessary labor, materials, and equipment pursuant to San Diego City Charter Section 94.1.

~~Maintenance Contracts~~ has the meaning contained in section 65.0201 of this Code means routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

Major public works contract means a public works contract valued at more than \$500,000.

Minor public works contract means a public works contract valued at less than \$500,000 or less.

~~Person~~ has the same meaning as that in San Diego Municipal Code section 11.0210.

~~Protest Body~~ means a panel appointed by the City Manager as needed to review evidence presented by all interested parties to determine whether the evaluation team's contract selection is in accordance with all applicable laws and guidelines.

~~Public Meeting~~ means an assemblage of interested persons gathered in response to a notice specifying the time and place where bids will be opened.

~~Public Works~~ means the construction, reconstruction, or repair of public buildings, streets, utilities and other public works.

Public Works Contract means a contract for the construction, reconstruction or repair of public buildings, streets, utilities and other public works, including design-build contracts, construction manager at risk contracts, and job order contracts.

Responsible means a bidder's quality, fitness, and capacity to perform the particular requirements of the proposed work.

~~Responsiveness means a bidder's compliance with the bidding instructions.~~

~~Services means all work provided by persons other than consultants. It includes maintenance contracts. It excludes public works and goods.~~

~~Sole Source means the recipient of the award of a public works contract, consultant agreement, or contract without competitive selection or bidding.~~

~~Sole sSource cContract means a public works contract, consultant agreement, or contract awarded without competitive selection or bidding.~~

~~Task oOrder means an authorization for to perform construction, reconstruction, repair and maintenance public works issued under a general requirements job order contract or a multiple award design-build contract under Section 22.3310.~~

~~Valued at means the amount authorized to be expended for performance of a public works contract at the same time of bid opening.~~

(Amended 9-3-2002 by O-19094 N.S. and O-19095 N.S.)

(Amended 1-24-2005 by O-19353 N.S.)

(Amended 2-4-2010 by O-19922 N.S; effective 7-1-2010.)

§22.3004 Contractor Standards

- (a) Prior to awarding a contract greater than \$50,000, the City shall make a determination that the bidder has the capability to fully perform the contract requirements and the business integrity to justify the award of public funds. The factors the City may consider include, but are not limited to:
- (1) Financial resources, including financial sufficiency under California Labor Code Section 2810;
 - (2) Technical qualifications;
 - (3) Experience;
 - (4) Material, equipment, and expertise necessary to carry out the work;
 - (5) A satisfactory record of performance; and
 - (6) A satisfactory record of compliance with applicable statutes and regulations.
- (b) Bidders are required to submit documentation, under penalty of perjury, to determine if the bidder meets the standards set forth in Section 22.3004(a). To be eligible to bid on public works contracts, bidders must submit the documentation as part of a prequalification process adopted by the City Manager, and be approved prior to bidding on a public works contract. For contracts for goods, contracts for services, and consultant contracts, the documentation may be submitted as part of the bidder's bid, proposal, or other application for a contract.
- (c) During the term of a contract, the contractor shall comply with all applicable local, state and federal laws, including health and safety, labor and employment, and licensing laws, that affect the employees, worksite or performance of the contract. Each contractor shall notify the City within

- fifteen calendar days upon receiving notification that a government agency has begun an investigation of the contractor that may result in a finding that the contractor is or was not in compliance with said laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by the contractor. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by the City.
- (d) Upon award, amendment, renewal, or extension of a contract, all contractors shall complete a pledge of compliance attesting under penalty of perjury to compliance with this Section. Only one pledge of compliance is required for each contract. Contractors shall ensure that their subcontractors whose subcontracts are greater than \$50,000 in value complete a pledge of compliance attesting under penalty of perjury to compliance with this Section.
- (e) Violations of this Section may be reported to the City Manager who shall investigate such complaint. Whether based upon such complaint or otherwise, if the City has determined that the contractor has violated any provision of this Section, the City shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the City Manager may do one, all, or any combination of the following:
- (1) Declare a material breach of the contract and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the contract.
- (2) Declare the contractor to be non-responsible in accordance with the procedures set forth in Section 22.3004(f).
- (3) Debar the contractor pursuant to Chapter 2, Article 2, Division 8 of this Code.
- (f) A bidder who is denied the award of a contract because the bidder is not considered to be responsible may contest the City's determination pursuant to the bid protest provisions in Section 22.3017(b). A bidder who is determined to be non-responsible and ineligible to bid on public works contracts as a result of the prequalification process may contest the City's determination pursuant to this Section.
- (1) Before declaring a contractor non-responsible, the City Manager shall notify the contractor of the proposed determination of non-responsibility, serve a summary of the information upon which the determination is based, and provide the contractor with an opportunity to be heard in accordance with applicable law. Upon request, the contractor is entitled to a hearing before the City Council's Budget and Finance Committee. At such hearing, the contractor will be allowed to rebut adverse information and to present evidence that the contractor

has the necessary quality, fitness and capacity to perform the work. The Budget and Finance Committee shall make a determination upholding or rejecting the City Manager's declaration, and shall forward its determination to the City Council for review and approval or rejection. A determination by the City Council shall be final and constitute exhaustion of the contractor's administrative remedies.

(g) The City Manager shall maintain a list of contractors that have been determined to be non-responsible by the City. After two years from the date the contractor has been determined to be non-responsible, the contractor may request removal from the list by the City Manager. If the contractor can satisfy the City Manager that the contractor has the necessary quality, fitness, and capacity to perform work in accordance with the criteria set forth in Section 22.3004(a), its name shall be removed from the list. Unless otherwise removed from the list by the City Manager, names shall remain on the list for five years from the date of declaration of non-responsibility.

(h) This Section applies to public works contracts, contracts for goods, contracts for services, and consultant contracts.

(Added 5-24-2005 by O-19383 N.S.)

(Amended 11-24-08 by O-19808 N.S; effective 12-24-2008.)

§22.3006 — Bid Initiation; When Advertising in Official Newspaper Required for Public Works Contract

(a) ~~Major public works contracts that provide for an expenditure of more than \$250,000 shall be advertised for a minimum of one day in the City Official Newspaper; provided, however, that no advertising shall be required for a sole source contract certified by the City Manager in accordance with section 22.3037.~~

(b) ~~The City Manager may award minor public works contracts without advertising. In lieu of advertising, the City Manager shall follow procedures set forth in Municipal Code Chapter 2, Article 2, Division 36, and in regulations adopted by the City Manager consistent with this Section and Division 36. The Manager's regulations shall ensure that the City seeks competitive prices either orally or in writing and shall ensure that the City Manager has taken those prices under consideration before a minor public works contract is awarded.~~

(Retitled from "Bid Initiation; Advertising in Official Newspaper" and amended 9-3-2002 by O-19095 N.S.)

(Amended 1-24-2005 by O-19353 N.S.)

§22.30075 Insurance and Bonds May Be Required

The City is authorized to require vendors, consultants and contractors to provide insurance and surety bonds for contracts and ~~public works contracts~~. Where required,

the bidder shall submit proof of insurance or surety bonds, or both, acceptable to the City prior to award. The City may award a contract to the next *bidder* that meets all requirements when the winning *bidder* does not meet deadlines for submitting acceptable bond and insurance documents.

(Retitled from "Insurance and Bonds May be Required" and amended 9-3-2002 by O-19095 N.S.)

§22.30086 Issuance of Specifications for Contracts Requiring Bidding

For contracts requiring bidding under divisions 30 through 36, and 38 of Chapter 2, Article 2 of this Municipal Code:

- (a) ~~When making a procurement, t~~The City will issue a description ~~("specifications")~~ describing for the gGoods, sServices, pPublic wWorks, or Cooperative Procurement Contract consultant services to be procured.
- (b) Bidders are responsible for carefully examining the specifications and all provisions relating to the items to be furnished or the work to be done. Failure to respond as requested may result in rejection of a bid.
- (c) The ~~Purchasing Agent~~City shall issue invitations to bid or requests for proposals for public works, materials, supplies, equipment, services, consultants, insurance and other public contracts required for the City.

(Retitled from "Issuance of Specifications" and amended 9-3-2002 by O-19095 N.S.)

§22.3007 Use of Brand Name in Specifications

- (a) Any reference to a specific brand name in specifications is illustrative only. A reference to a brand name describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
- (b) A *bidder* may offer an equivalent ("or equal") in response to a brand name reference. When an "or equal" is offered, the City may test and evaluate the product at the *bidder's* sole cost and expense. If a bidder refuses to pay to test or evaluate the "or equal" and refuses to provide the brand name specified prior to award of the contract, the City may reject the bid.
- (c) At *bidder's* expense, *bidder* bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal." At *bidder's* expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.

- (d) The City reserves the sole right to reject a bid containing any "or equal" offered.
- (e) The City may specify when an "or equal" will not be considered or accepted where necessary for compatibility with existing City equipment or systems, to reduce the different types of spare parts held in City inventory, or where patents or other intellectual property rights preclude acceptance of an "or equal."

("Use of Brand Name in Specifications; Offers of "Or Equals"; Testing"
added 6-29-1998 by O-18532 N.S.)

§22.30098 Invitations to Bid, Requests for Qualifications and Proposals

- (a) For contracts required to be bid under divisions 30 through 36 of Chapter 2, Article 2, of this Municipal Code, a~~An~~ invitation to bid shall be issued for contracts awarded on the basis of lowest bid. The invitation to bid shall include specifications that describe the public works, material, supplies, equipment, services, consultants or insurance with sufficient particularity to allow for competitive bidding and evaluation. The specifications shall also describe the functions and performance that are required and any applicable operational limitations or parameters.
- (b) A request for proposals shall be issued for contracts awarded on a basis other than lowest bid. The request for proposals shall include specifications that describe the public works, material, supplies, equipment, services, consultants or insurance with sufficient particularity to allow for competitive bidding and evaluation. The specifications shall also describe the functions and performance that are required and any applicable operational limitations or parameters. The request for proposals shall include a description of the evaluation criteria and the process the City will use to determine the winning proposal.
 - (1) The City may negotiate the terms of a contract with the winning bidder based on the request for proposals and bidder's proposal, or award the contract without further negotiation. For requests for proposals that do not require the bidder to propose a contract price, if the City and the winning bidder fail to agree on a price, the City may reject the winning bidder's proposal and enter into negotiations with the bidder with the next best proposal.
- (c) The City may issue a request for qualifications or other document to determine the interest of potential bidders or to shortlist or prequalify the field of bidders eligible to submit bids or proposals.

(Amended 9-3-2002 by O-19095 N.S.)

§22.3009 Timely and Responsive Submission of Bids and Proposals

To be eligible for consideration, bidders are required to submit responsive bids and proposals to the City on or before the bid closing deadline set by the City. The City may consider a bid or proposal that was submitted before the bid closing deadline via a delivery medium such as the U.S. mail, even though the bid or proposal arrives after the bid closing deadline, provided the City finds that acceptance of the bid or proposal is in the best interests of the City and there is no possibility of collusion or fraud in the procurement process.

("Timely and Responsive Submission of Bids and Proposals" added 6-29-1998 by (O-18532 N.S.)

§22.3010 Addenda to Specifications

- (a) The City may issue addenda to the specifications where necessary. All addenda shall be considered to be incorporated into the specifications contract.
- (b) Prior to bid submission, each bidder is responsible for determining whether addenda were issued prior to bid submission. Failure to respond to addenda may result in rejection of a bid.

("Addenda to Specifications" added 6-29-1998 by O-18532 N.S.)

§22.3011 — Request for Proposals

~~When a requesting department seeks a systems acquisition comprising the design and installation of state of the art technological components, the Purchasing Agent may issue a request for proposals which shall sufficiently detail the requested procurement by function, together with any applicable description, operational requirements and all structural and operating environment considerations. The Purchasing Agent may additionally reserve the right to thereafter issue an invitation to bid based on a refinement of concept from any proposal submitted.~~

~~("Request for Proposals" added 6-29-1998 by O-18532 N.S.)~~

§22.3016 — Timely and Responsive Submission of Bids and Proposals

~~To be eligible for consideration, bidders are required to submit responsive bids and proposals to the City on or before the bid closing date set by the City. The City may consider a bid or proposal that was submitted before the bid closing date via a delivery medium such as the U.S. mail, even though the bid or proposal arrives after the bid closing date, provided the City finds that acceptance of the bid or proposal is in the best interests of the City and there is no possibility of collusion or fraud in the procurement process.~~

~~("Timely and Responsive Submission of Bids and Proposals" added 6-29-1998 by O-18532 N.S.)~~

§22.3017~~1~~ — Bid Opening

- (a) ~~Invitations to bid shall indicate the date, time, and location where bids will be opened. If advertising for submission of bids is required, the bid opening will occur at a Public Meeting. The location of the bid opening shall be a place open to the public.~~
- (b) Substantial compliance with all of the following provisions renders the bid opening valid for all purposes:
 - (1) All bids will be opened at, or immediately after, the time noticed for the bid opening.
 - (2) No bidder or interested person will be excluded from the ~~Public Meeting~~ bid opening.
 - (3) Where no member of the public is in attendance, at least one City officer or employee, in addition to the City employee opening the bids, will be present.
 - (4) Bids will be unsealed and opened in the presence of those attending.

- (5) The name of the ~~project~~Public Works, Goods, Services, or Cooperative Procurement will be audibly announced to those present followed by the name of the bidder, the name of the surety, the amount of the bond, and the total amounts or unit amounts bid.
- (c) Any person present shall have the right to ask the announcements be repeated or to ask that omitted data be supplied. Such requests will be honored to the extent they do not unreasonably delay or interfere with the bid opening procedure, as determined in the sole discretion of the City employee opening bids.
- (d) Proposals received in response to a request for proposals may be opened at a public bid opening at the discretion of the City Manager.
(*"Bid Opening" added 6-29-1998 by O-18532 N.S.*)

§22.30182 Bid Opening Exceptions

- (a) ~~Where a Public Meeting is held but no members of the public attend, the bid opening may proceed in accordance with Section 22.3017(b)(3).~~
- (b) — In the event of public calamity or some unforeseen event (including an unusually large number of people in attendance) that renders it impossible or highly impracticable to open the bids at the time and place specified, the ~~special procedures in Section 22.3018(b)(1)–(2) shall govern. Use of the special procedures shall not~~City may change the date, time and location without invalidateing the bid opening.
- (1) A sign will be continuously posted at the ~~door of the originally specified room~~location, giving notice of an alternate location of the bid opening, from the time of the public calamity or unforeseen event until completion of the alternate bid opening. An officer or employee of the City will remain by the sign to answer inquiries. Not less than one-quarter hour nor more than one hour after the originally specified time for the opening of bids, the bids may be opened in the alternate ~~room~~location.
- (2) If it is impossible or impracticable to use the procedure under Section ~~22.30183012(ba)~~3012(1), the bids will either be returned to the bidders or be held unopened for a period of forty-eight hours. After forty-eight but not later than seventy-two hours after the originally specified time and place of the bid opening, bids may be opened at any hour, provided that every reasonable means has been taken to notify the respective bidders of the alternate time and place of the ~~reset Public Meeting~~bid opening.

(*"Bid Opening Exceptions" added 6-29-1998 by O-18532 N.S.*)

§22.30193 Withdrawal or Modification of Bid or Proposal After Bid Opening

Any *bidder* who seeks ~~or withdraw~~ to modify or withdraw a bid or proposal because of the *bidder's* inadvertent computational error affecting the bid or proposal price shall notify the City Department where bids or proposals were submitted no later than three working days following the bid closing. The *bidder* shall provide worksheets and such other information as may ~~bye~~ required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the *bidder* to prove the inadvertent error.
(*"Withdrawal or Modification of Bid After Bid Opening"* added 6-29-1998 by O-18532 N.S.)

§22.3026 ~~Award of Contracts and Public Works Contracts~~

- (a) ~~Except as provided in section 22.3026(b), for contracts and public works contracts that are required to be advertised, the City may make the award not less than ten calendar days after advertising in accordance with the following:~~
- (1) ~~Except for Sole Source Contracts authorized under section 22.3037, Public works contracts under sections 22.3102 and 22.3103 shall be awarded to the lowest responsible and reliable bidder that meets the specifications.~~
 - (2) ~~Contracts, excluding public works contracts and consultant agreements, shall be awarded on the basis of the low acceptable bid that best meets City requirements under section 22.3211.~~
 - (3) ~~Cooperative procurement contracts under a request for proposal or bid will be awarded on the basis of the proposal best meeting City requirements.~~
- (b) ~~The City is authorized to award contracts and public works contracts to the next bidder that meets all requirements when the apparent successful bidder under section 22.3026(a)(1) or (2) does not meet deadlines for submitting the required bond and insurance documents.~~
(*"Award of Contracts and Public Works Contracts"* added 6-29-1998 by O-18532 N.S.)

§22.302714 Waiver of Defects and Technicalities

The City may waive defects and technicalities when to do so is in the best interests of the City.
(*"Waiver of Defects and Technicalities"* added 6-29-1998 by O-18532 N.S.)

§22.3015 Rejection of Bids and Proposals

The City Manager may reject any and all bids or proposals when to do so is in the best interests of the City, and may re-advertise for bids or proposals.

§22.3016 City Manager's Certification of Sole Source Contract

- (a) The City Manager may certify that a *sole source contract* is justified because strict compliance with competitive selection or bidding requirements would be unavailing, or would not produce an advantage, or would be undesirable, impractical, or impossible.
- (b) The City Manager may delegate the *sole source* certification authority provided by section 22.3037(a) to the Assistant City Manager, Deputy City Manager, any Department Director, or an equivalent City officer.
("City Manager's Certification" added 6-29-1998 by O-18532 N.S.)
(Amended 1-24-2005 by O-19353 N.S.)

§22.302917 Protests of Contract Award

- (a) A ~~non-selected-bidder~~ who is not selected for contract award may protest the award of a contract, ~~public works contract, or consultant agreement to another bidder to the selected bidder~~ by submitting a written "Notice of Intent to Protest," protest.
 - (1) For contracts awarded pursuant to an invitation to bid, ~~which shall~~ the protest must be received by the City Department administering the contract award, no later than 5:00 p.m. on the tenth calendar days after the date of the bid opening.
 - (2) For contracts awarded pursuant to a request for proposals, the protest must be received by the City Department administering the contract award, no later than 5:00 p.m. on the tenth calendar day after the City's ~~announcement of the selected~~ notifies the bidders which of them submitted the winning proposal ~~or no later than ten calendar days from the date that the City issues notice of designation of a bidder as non-responsible~~. The City's notification may be by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), automated phone message or internet posting. The effective date of notice by mail is the date that the notice is deposited in the U.S. mail. The effective date of all other means of notice is the date it is transmitted.
 - (3) If the tenth calendar day falls on a weekend or City holiday, the protesting ~~bidder~~ may submit the Notice of Intent to Protest

~~the deadline to submit a protest shall be extended to 5:00 p.m. on the first work business day following such weekend or holiday. The City shall disclose the method of announcement to all bidders in the bid documents. Failure to submit a timely Notice of Intent to Protest shall bar consideration of a protest.~~

(b) A bidder who is denied the award of a contract because the bidder is not considered to be responsible may contest the City's determination by submitting a written protest.

(1) The protest must be received by the City Department administering the contract award no later than 5:00 p.m. on the tenth calendar day after the City notifies the bidder it has been deemed non-is not a responsible bidder. Notification may be by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), automated phone message or internet posting. The effective date of notice by mail is the date that the notice is deposited in the U.S. mail. The effective date of all other means of notice is the date it is transmitted.

(2) A bidder may request a hearing to present evidence contesting the City's determination that it is not a responsible bidder. The protest hearing shall be conducted in accordance with Council Policy 000-29. The request for a hearing must be made in writing and submitted with the bidder's protest.

(3) A bidder requesting a hearing shall submit a bid protest bond with the bidder's protest in any of the following forms: a surety bond from a California licensed surety, an irrevocable standby letter of credit, certified check, cashier's check or money order, made payable to the City of San Diego. The bid protest bond shall be in the following amounts:

<u>Contract Value (\$)</u>	<u>Bond Amount</u>
<u>Less than 250,000</u>	<u>\$ 5,000</u>
<u>250,000 – 1,000,000</u>	<u>\$10,000</u>
<u>Greater than 1,000,000</u>	<u>\$25,000</u>

(4) If the City's determination that the bidder is not responsible is affirmed by the hearing officer or panel, the bidder shall be assessed the City's costs of the protest hearing if the hearing officer or panel concludes the bidder's protest was without merit, or brought for the purpose of delaying the award of the contract. The bidder shall then pay the assessed costs within thirty days of receipt of an invoice from the City. If the bidder fails to pay within thirty days, the City may deduct the assessed costs from the bid protest bond provided by the bidder.

(cb) The Notice of Intent to Protest protest must be identified as a "bid protest" in the subject line or title of the document, and shall clearly state all legal and factual grounds claimed for the protest and include any supporting

documentation. Any grounds not raised in the written protest are deemed waived by the bidder. Failure to clearly state the grounds for the protest and provide supporting documentation shall be deemed a waiver of all protest rights.

- (c) ~~The City Department administering the contract award shall review the Notice of Intent to Protest to determine whether it complies with section 22.3029(b) and whether a Protest Hearing is required under section 22.3029(d).~~
- (d) ~~A protesting bidder may present evidence at a Protest Hearing only when the alleged grounds for the protest are as follows: (1) The City failed to follow procedures or requirements specified in the Request for Bids or Request for Proposals or equivalent, including any amendments; (2) City employees or evaluation team members engaged in misconduct or impropriety; (3) the City's designation of the protesting bidder as non-responsive was incorrect. A protesting bidder shall not be entitled to a hearing to protest its own or another bidder's responsiveness; however, the City Manager may exercise discretion and allow a bidder designated as non-responsive by the City Department to file a Formal Protest, pursuant to the Formal Procedures set forth under this section 22.3029, if the City Manager determines that a hearing is necessary to resolve a relevant factual issue that cannot be determined from the face of a bid document or proposal.~~
- (e) ~~After review of a bidder's Notice of Intent to File a Protest, the City Department will provide written notice to the bidder of its determination, detailing the factual basis for the City's determination. Service of the City Department's determination shall be made in accordance with one of the methods listed in Municipal Code section 11.0301.~~
- (f) ~~If the bidder desires to continue its protest notwithstanding the City Department's determination, the bidder must submit a written Formal Protest, which shall be received by the City Department administering the contract award within ten calendar days of service of the City Department's determination. If the tenth calendar day falls on a weekend or City holiday, the protesting bidder may submit the Formal Protest on the first work day following such weekend or holiday. Failure to file a timely written Formal Protest shall bar consideration of the Formal Protest.~~
- (g) ~~The written Formal Protest shall include a detailed factual response to the City Department's determination, including all supporting documentation. The bidder shall also include a bid protest bond in any of the following forms: a surety bond from a California licensed surety, an irrevocable standby letter of credit, certified check, cashier's check or money order, made payable to the City of San Diego. The bid protest bond shall be in the following amounts:~~

Contract Value (\$)	Bond Amount
Less than 250,000	\$5,000
250,000 - 1,000,000	\$10,000
Greater than 1,000,000	\$25,000

- (h) ~~The City Manager shall appoint a *Protest Body* and determine whether the grounds stated in the written Formal Protest meet the requirements for a Protest Hearing, as set forth in this section 22.3029. The *Protest Body* shall conduct the Protest Hearing in accordance with the Policy approved by City Council. The *bidder's* failure to comply with Formal Protest procedures set forth in the Policy approved by City Council shall bar further consideration of the *bidder's* Formal Protest.~~
- (i) ~~If the *Protest Body's* decision upholds the determination of the City Department regarding the award, the *Protest Body*, at its discretion, may assess the City's costs of the Protest Hearing. The *bidder* shall then pay the assessed costs within thirty calendar days of service of the decision; otherwise the City may deduct the assessed costs from the bid protest bond provided by the *bidder*.~~
- (j) ~~The decision of the *Protest Body* shall be issued in accordance with the Policy approved by City Council and shall become final on the date of service of the decision, in accordance with one of the methods listed in Municipal Code section 11.0301.~~ (d) The City shall not award the contract being protested until after the City issues a written decision on the bidder's protest. The City's written decision shall be final and exhaust the bidder's administrative remedies.
- (e) The procedure and time limits set forth in this Section are mandatory and are the bidder's sole and exclusive remedy. Failure to comply with these procedures and time limits shall constitute a waiver of any right to further pursue a protest.
- (fk) The bidder's filing of a Notice of Intent to File a Protest or written Formal Protest protest shall not preclude the City Manager from rejecting all bids and rebidding-advertising a contract.
(Amended 9-3-2002 by O-19094 N.S.)
(Amended 1-24-2005 by O-19353 N.S.)

§22.303618 Alterations in Contracts, and Public Works Contracts

- (a) For major public works projects previously approved and appropriated through the Annual Capital Improvements Program (CIP) budget, the City Manager is authorized to make alterations without City Council approval provided that:
- (1) The cost of each alteration does not increase the contract amount by more than \$500,000; and
 - (2) The cost of the alterations do not cause the project to exceed the total amount authorized for the project by ordinance or resolution; and
 - (3) The alterations are necessary to fulfill the purpose of the contract; and

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(4) The alterations are made by agreement in writing between the contractor and the City.

(ba) ~~Except as provided in section 22.3036(b), whenever it becomes necessary to make alterations in contracts~~For all other contracts, and public works contracts, the City Manager is authorized to make alterations without City Council approval provided that: the City Manager shall make alterations only when authorized by the Council, unless such alterations meet all of the following criteria:

(1) The cost of each alteration does not increase the contract or public works contract amount by more than \$200,000; and

(2) The cost of the alterations does not cause the project to exceed the total amount authorized for the project by ordinance or resolution; and

(3) The City Manager certifies that the alterations are necessary to fulfill the purpose of the contract; and

(4) The alterations are made by agreement in writing between the contractor and the City Manager; and

(5) The cost of the alterations do not cause the project to exceed the amount of City Manager's authority to award contracts without City Council approval established in this Chapter.

(b) ~~Notwithstanding the limitation provided by section 22.3036(a), in any contract for the construction of the South Bay Ocean Outfall let pursuant to cooperative agreement with Environmental Protection Agency and the International Boundary and Water Commission, the City Manager may approve alterations without authorization of the Council, provided that the cost of each alteration does not exceed five percent of the original prime contract value and provided that all other criteria in section 22.3036(a) are met.~~

("Alterations in Contracts, Consultant Contracts, and Public Works Contracts" added 6-29-1998 by O-18532 N.S.)

(Amended 1-24-20005 by o-19353 N.S.)

§22.3037 — City Manager's Certification of Sole Source Contract

(a) ~~The City Manager may certify that a sole source contract is justified because strict compliance with competitive selection or bidding requirements would be unavailing, or would not produce an advantage, or would be undesirable, impractical, or impossible.~~

(b) ~~The City Manager may delegate the sole source certification authority provided by section 22.3037(a) to the Assistant City Manager, Deputy City Manager, or any Department Director.~~

("City Manager's Certification" added 6-29-1998 by O-18532 N.S.)

(Amended 1-24-2005 by O-19353 N.S.)

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Article 2: Administrative Code**Division 31: Public Works Contracts**

("Public Works Contracts"
added 6-29-1998 by O-18532 N.S.)

§22.3101 Purpose

This Division establishes requirements and procedures for the award of *public works contracts*.

(Amended 9-3-2002 by O-19095 N.S.)

§22.3102 City Manager's Authority to Award Major and Minor Public Works Contracts

- (a) The City Manager may award a *major public works contract* that provides for an expenditure of an amount equal to or less than \$30,000,000 without City Council approval, provided that:
 - (1) The public works project was previously approved and appropriated through the Annual Capital Improvements Program (CIP) budget; and
 - (2) The *major public works contract* has been advertised as described in Section 22.3106 or has been certified by the City Manager as a *sole source contract* in accordance with section 22.3016; and
 - (3) The *major public works contract* is in writing.
- (b) The award of all other *major public works contracts* must be approved by the City Council.
- (c) The City Manager may award *minor public works contracts* without City Council approval pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.

("Public Works Contracts Required to be Competitively Awarded" retitled to "When Major Public Works Contracts May be Awarded by City Manager" and amended 9-3-2002 by O-19095 N.S.)

(Amended 1/24/2005 by O-19353 N.S.)

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§22.3103 City Manager's Authority to Award Job Order Contracts

- (a) *Job order contracts* for public works may be awarded by the City Manager under the provisions of Section 94.1 of the City Charter, provided that:
 - (1) The specifications were advertised in accordance with Section 22.3106.
 - (2) The specifications provided for sealed competitive bidding on unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual *task orders*.
 - (3) The *job order contract* does not exceed a term of two years in duration.
 - (4) The *job order contract* does not contain any provision which would guarantee the contractor cumulative *task orders* in excess of \$50,000.
- (b) If a *job order contract* is awarded for a term less than two years, one or more extensions may be awarded but the entire term of the *job order contract*, including extensions, may not exceed two years.
- (c) A *job order contract* may not exceed \$10,000,000 without City Council approval.

("General Requirements Contracts" added 6-29-1998 by O-18532 N.S.)

§22.3104 City Manager's Authority to Award Task Orders

- (a) An individual *task order* may not exceed the sum of \$1,000,000 without City Council approval, except in the case of a bona fide emergency affecting health, safety, or property.
- (b) The City Manager is prohibited from subdividing any public work which logically should be performed as a single contract transaction requiring the expenditure of more than \$1,000,000 into separate *task orders* for purposes of avoiding this limitation.

("Task Orders" added 6-29-1998 by O-18532 N.S.)

§22.3105 Use of City Forces

- (a) City forces shall not be used on a public works project if the cost of using City forces exceeds \$100,000 unless the City Council has approved use of City forces on the project. When City Council approval is required, the City Manager shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract.

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- (b) The City Manager may exercise his or her discretion of the use of City forces on a public works project when the cost of using City forces does not exceed \$100,000.

("Use of City Forces" added 6-29-1998 by O-18532 N.S.)

§22.3106 Advertising of Public Works Contracts

- (a) *Major public works contracts* shall be advertised for a minimum of one day in the City Official Newspaper at least ten days before the deadline to submit bids or proposals.
- (b) The City Manager may award *minor public works contracts* without advertising. In lieu of advertising, the City Manager shall follow procedures set forth in Chapter 2, Article 2, Division 36 of the Municipal Code.

§22.3107 Award of Public Works Contracts

- (a) *Major public works contracts* of \$1,000,000 or more shall be competitively awarded according the project delivery method:
 - (1) Design-build contracts shall be awarded pursuant to Chapter 2, Article 2, Division 33 or 34 of the Municipal Code.
 - (2) *Job order contracts* shall be awarded to the responsible and reliable bidder with the lowest total unit cost.
 - (3) Construction manager at risk contracts shall be awarded pursuant to Chapter 2, Article 2, Division 38 of the Municipal Code.
 - (4) All other *major public works contracts* of \$1,000,000 or more shall be awarded to the lowest responsible and reliable bidder.
- (b) *Major public works contracts* of more than \$500,000 and less than \$1,000,000 shall be competitively awarded pursuant to Section 22.3107(a), except that the City Manager may include a bid discount pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.
- (c) *Minor public works contracts* shall be competitively awarded pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.

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§22.3108 Exceptions to Advertisement and Competitive Award of Public Works Contracts

- (a) Unless otherwise authorized by Section 22.3614, *public works contracts* may be awarded by the City Manager without advertisement and competition when the public interest or necessity demands the immediate expenditure of public money to safeguard life, health or property due to extraordinary fire, flood, storm, epidemic or other disaster, provided that:
- (1) The City Manager immediately reports the emergency award and its justifications to the City Council in writing; and
 - (2) The City Council ratifies the award by resolution and a two-thirds vote.
- (b) *Public works contracts* may be awarded by the City Manager without advertisement and competition if the City Manager certifies a *sole source contract* is necessary pursuant to Section 22.3016. If the justification of the *sole source contract* is the emergency nature of the project, the City Manager shall notify the City Council and obtain the City Council's approval pursuant to Section 22.3108(a).

Article 2: Administrative Code**Division 31: Public Works Contracts**

("Public Works Contracts"
added 6-29-1998 by O-18532 N.S.)

§22.3101 Purpose

This Division is intended to establish procedures for contracting for public works, and to clarify when competitive bidding is required, for ~~major~~ establishes requirements and procedures for the award of public works contracts. It also authorizes general requirements contracts under limited circumstances.
(Amended 9-3-2002 by O-19095 N.S.)

§22.3102 ~~When City Manager's Authority to Award Major and Minor Public Works Contracts May be Awarded by City Manager~~

- (a) The City Manager may award a *major public works contract* that provides for an expenditure of an amount equal to or less than \$1,000,000 ~~30,000,000~~ without City Council approval, provided that the following requirements are met:
- (1) ~~The~~ The major public works project was previously approved and appropriated through the Annual Capital Improvements Program (CIP) budget; and
 - (2) ~~The~~ The major public works contract has been advertised as described in Section 22.31006 or has been certified by the City Manager as a sole source contract in accordance with section 22.30373016; and
 - (3) ~~The~~ The major public works contract is in writing.
- (b) ~~The award of All other major public works contracts that do not meet the requirements of Section 22.3102 (a) are required to must be authorized approved by the City Council before being awarded by the City Manager.~~
- (c) The City Manager may award minor public works contracts without City Council approval pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code. The City Council may authorize the City Manager to award a public works contract if it has met the following requirements:
- (1) ~~the public works contract has been advertised as described in Section 22.3006; and~~
 - (2) ~~the public works contract is in writing; and~~
 - (3) ~~the City Council has authorized the necessary expenditure of funds for the public works contract.~~

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*("Public Works Contracts Required to be Competitively Awarded" retitled to "When Major Public Works Contracts May be Awarded by City Manager" and amended 9-3-2002 by O-19095 N.S.)
(Amended 1/24/2005 by O-19353 N.S.)*

**§22.3103
Contracts**

City Manager's Authority to Award General Requirements Job Order

- (a) ~~General Requirements Job order cContracts~~ for public works may be awarded by the City Council ~~under written agreement~~ Manager under the provisions of Section 94.1 of the City Charter, ~~subject to the limitations of Section 22.3103(a)-(d) provided that:~~
- (1) The specifications were advertised in accordance with Section 22.30106.
 - (2) The specifications provided for sealed competitive bidding on unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual ~~Task oOrders~~.
 - (3) The ~~General Requirements job order cContract~~ does not exceed a term of two years in duration.
 - (4) The job order contract does not contain any provision which would guarantee the contractor cumulative task orders in excess of \$50,000.
- (b) If a ~~General Requirements job order cContract~~ is awarded for a term less than two years, one or more extensions may be awarded but the entire term of the ~~requirements job order contract~~, including extensions, may not exceed two years.
- (c) ~~A General Requirements job order Ccontract may not contain any provision which would guarantee the contractor cumulative Task Orders in excess of \$50,000.~~
- (cd) ~~A General Requirements job order cContract may not exceed the sum of \$10,000,000 for the time in which the requirements contract is effective, including any extensions without City Council approval.~~
- ("General Requirements Contracts" added 6-29-1998 by O-18532 N.S.)

§22.3104

City Manager's Authority to Award Task Orders

- (a) ~~Following award of a General Requirements Contract by the Council, the City Manager may thereafter identify and issue Task Orders under the General Requirements Contract and shall certify in accordance with Section 22.3104(b) that the public will not benefit from strict compliance with the competitive bidding requirements of Charter section 94 for the Task Order because, under the particular circumstances, one or more of the following criteria have been met:~~

- (1) ~~strict compliance with the competitive bidding requirements will work an incongruity and not affect the final result; or~~
- (2) ~~strict compliance will not produce an advantage; or~~
- (3) ~~advertising for bids is undesirable because it will be practically impossible to obtain what is needed or required.~~
- (b) ~~The duty to provide the certification set forth in Section 22.3104(a) may not be delegated or executed by any person other than the City Manager, except that the City Manager may authorize the Assistant City Manager, and Deputy City Manager, or any Department Director to make the certification.~~
- (ae) An individual ~~Task Order~~ may not exceed the sum of \$500,000 ~~1,000,000~~ without City Council approval, except in the case of a bona fide emergency affecting health, safety, or property.
- (d) ~~Upon a decision by the City Manager to issue a Task Order exceeding \$250,000, the City Manager shall immediately inform the City Auditor and Comptroller in writing of the decision, the project or task for which the Task Order is issued, and the facts justifying the certification issued pursuant to Section 22.3104(a).~~
- (be) The City Manager is prohibited from subdividing any public work which logically should be performed as a single contract transaction requiring the expenditure of more than \$500,000 ~~1,000,000~~ into separate ~~Task Orders~~ requirements for purposes of avoiding this limitation.

("Task Orders" added 6-29-1998 by O-18532 N.S.)

§22.3105 Use of City Forces

- (a) City forces shall not be used on a public works projects if the cost of using City forces ~~therefor exceeds the sum of \$100,000~~ unless the City Council has approved use of City forces on ~~these the~~ projects. When City Council approval is required, the City Manager shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract.
- (b) The City Manager may exercise his or her discretion of the use of City forces on a public works project when the cost of using City forces ~~therefor~~ does not exceed ~~the amount of~~ \$100,000.

("Use of City Forces" added 6-29-1998 by O-18532 N.S.)

§22.3106 Advertising of Public Works Contracts

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- (a) Major public works contracts shall be advertised for a minimum of one day in the City Official Newspaper at least ten days before the deadline to submit bids or proposals.
- (b) The City Manager may award minor public works contracts without advertising. In lieu of advertising, the City Manager shall follow procedures set forth in Chapter 2, Article 2, Division 36 of the Municipal Code.

§22.3107 Award of Public Works Contracts

- (a) Major public works contracts of \$1,000,000 or more shall be competitively awarded according the project delivery method:
 - (1) Design-build contracts shall be awarded pursuant to Chapter 2, Article 2, Division 33 or 34 of the Municipal Code.
 - (2) Job order contracts shall be awarded to the responsible and reliable bidder with the lowest total unit cost.
 - (3) Construction manager at risk contracts shall be awarded pursuant to Chapter 2, Article 2, Division 38 of the Municipal Code.
 - (4) All other major public works contracts of \$1,000,000 or more shall be awarded to the lowest responsible and reliable bidder.
- (b) Major public works contracts of more than \$500,000 and less than \$1,000,000 shall be competitively awarded pursuant to Section 22.3107(a), except that the City Manager may include a bid discount pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.
- (c) Minor public works contracts shall be competitively awarded pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.

§22.3108 Exceptions to Advertisement and Competitive Award of Public Works Contracts

- (a) Unless otherwise authorized by Section 22.3614, public works contracts may be awarded by the City Manager without advertisement and competition when the public interest or necessity demands the immediate expenditure of public money to safeguard life, health or property due to extraordinary fire, flood, storm, epidemic or other disaster, provided that:

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- (1) The City Manager immediately reports the emergency award and its justifications to the City Council in writing; and
 - (2) The City Council ratifies the award by resolution and a two-thirds vote.
- (b) Public works contracts may be awarded by the City Manager without advertisement and competition if the City Manager certifies a *sole source contract* is necessary pursuant to Section 22.3016. If the justification of the *sole source contract* is the emergency nature of the project, the City Manager shall notify the City Council and obtain the City Council's approval pursuant to Section 22.3108(a).

Article 2: Administrative Code**Division 32: Contracts for Services, Goods, and Consultants**

("Contracts for Personal Services, Goods, and Consultants" added 6-29-1998 by O-18532 N.S.)

§22.3201 Purpose and Intent

This Division establishes requirements for award of contracts other than *public works contracts*.

("Purpose and Intent" added 6-29-1998 by O-18532 N.S.)

§22.3202 Authority to Enter Contracts; Competitive Bid Process Required

The Purchasing Agent is authorized to enter into contracts on behalf of City departments. All contracts shall be awarded through a competitive process unless otherwise provided in this Division. The City Manager may exercise the authority granted to the Purchasing Agent by this Division.

("Authority to Enter Contracts; Competitive Bid Process Required" added 6-29-1998 by O-18532 N.S.)

§22.3203 Competitive Process for Contracts for Goods and Services

Except as otherwise provided in Section 22.3208, *contracts for goods and contracts for services* shall be competitively awarded based on the estimated amount of City funds to be paid to the winning *bidder* under the contract:

- (a) No competition is required for contracts of \$5,000 or less.
- (b) For contracts greater than \$5,000 but equal to or less than \$10,000, the Purchasing Agent may award the contract but shall seek competitive prices either orally or in writing.
- (c) For contracts greater than \$10,000 but equal to or less than \$50,000, the Purchasing Agent may award the contract but shall solicit written price quotations from at least five potential sources.
- (d) For contracts greater than \$50,000 but equal to or less than \$1,000,000, the Purchasing Agent may award the contract only after advertising it for a minimum of one day in the City Official Newspaper at least ten days before bids or proposals are due.

- (e) For contracts greater than \$1,000,000, the Purchasing Agent shall advertise for sealed proposals for a minimum of one day in the City Official Newspaper at least ten days before bids or proposals are due.

(Amended 9-3-2002 by O-19095 N.S.)

§22.3204 Subdividing Purchase Prohibited

The Purchasing Agent is prohibited from subdividing into two or more purchases any purchase of goods or services for an expenditure of \$50,000 or more that logically should be made as a single transaction if the purpose of the subdividing is to avoid the bidding requirements of the San Diego Municipal Code and the City Charter.
("Subdividing Purchase Prohibited" added 6-29-1998 by O-18532 N.S.)

§22.3205 Civil Service Commission Review

All *contracts for services* shall be reviewed by the Civil Service Commission in accordance with Section 23.1801.
("Civil Service Commission Review" added 6-29-1998 by O-18532 N.S.)

§22.3206 Award of Contracts for Goods and Services

- (a) Except as provided in Section 22.3206(b), the Purchasing Agent shall award *contracts for goods* and *contracts for services* to the *bidder* offering the best value to the City, considering price and other factors. The City may consider the following factors in evaluating which bid or proposal offers the best value to the City: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs (including the costs associated with proprietary invention), experience and responsibility of the *bidder*, and any additional factors the City deems relevant.
- (b) The Purchasing Agent may award *contracts for goods* and *contracts for services* to the lowest *responsible* and reliable *bidder* if the Purchasing Agent determines that the quality of the goods or services in responsive bids will be substantially equal and that the primary difference between bids will be the price.
- (c) Unless otherwise provided in this Division, *contracts for goods* and *contracts for services* that exceed \$1,000,000 as awarded, amended or extended, must be approved by the City Council.

("Factors to Determine Whether Bid Meets Specifications" added 6-29-1998 by O-18532 N.S.)

§22.3207 Award of Consultant Contracts

- (a) The Purchasing Agent may award a *consultant contract* without City Council approval if:
 - (1) The *consultant contract* and any subsequent amendments cumulatively do not exceed \$250,000; and
 - (2) The total amount of contract awards to the consultant, including the current award, does not exceed \$250,000 in any given fiscal year.
- (b) The Purchasing Agent may award a *consultant contract* for a public works project without City Council approval provided that:
 - (1) The public works project was previously approved and appropriated through the annual capital improvements program (CIP) budget; and
 - (2) The annual CIP budget is the source of funding for the *consultant contract*; and
 - (3) The *consultant contract* and any subsequent amendments cumulatively do not exceed \$1,000,000; and
 - (4) The total amount of contract awards to the consultant, including the current award, does not exceed \$1,000,000 in any given fiscal year.
- (c) All other *consultant contracts* must be approved by the City Council.

("Consultant Contracts" added 6-29-1998 by O-18532 N.S.)
(Amended 1/24/2005 by O-19353 N.S.)

§22.3208 Contracts Not Required to be Competitively Awarded

The following contracts may be awarded by the Purchasing Agent without advertisement or competition:

- (a) A contract that provides for an expenditure of less than \$5,000.
- (b) A *cooperative procurement contract* in an amount less than \$10,000.
- (c) A contract necessary to safeguard life, health or property due to extraordinary fire, flood, storm, epidemic or other disaster, provided that:
 - (1) The Purchasing Agent immediately reports the emergency award and its justifications to the City Council in writing; and
 - (2) The City Council ratifies the award by resolution and a two-thirds vote.
- (d) A *cooperative procurement contract* awarded by another agency provided that:
 - (1) The Purchasing Agent certifies in writing that the *cooperative procurement contract* is in the best interests of the City; and

- (2) The cooperative procurement is to the City's economic advantage; and
 - (3) The *agency's* bidding process substantially complies with the City's competitive bidding requirements.
- (e) A *sole source contract* pursuant to Section 22.3016. If the justification of the *sole source contract* is the emergency nature of the project, the Purchasing Agent shall notify the City Council and obtain the City Council's approval pursuant to Section 22.3208(c).
- (f) Annual blanket purchase orders for an expenditure greater than \$5,000 for commercially available materials and supplies, provided that they are:
 - (1) Required by City forces for immediate completion of work in progress; and
 - (2) Not normally kept in City stores; and
 - (3) Less than \$50,000.
- (g) Contracts for Inmate Services which comply with Section 22.3209.
- (h) Contracts for Services with Agencies or Non-Profit Organizations which comply with Section 22.3210.

("Contracts Not Required to be Competitively Bid" added 6-29-1998 by O-18532 N.S.)

(Amended 1/24/2005 by O-19353 N.S.)

§22.3209 Contracts For Inmate Services

The Purchasing Agent may award a contract for inmate services without City Council approval provided that:

- (a) The Purchasing Agent has certified in writing that the contract is in the public interest; and
- (b) The contract does not exceed \$500,000 per year; and
- (c) The Purchasing Agent has considered all of the following:
 - (1) Whether the *agency* agrees to direct supervision of the workers; and
 - (2) Whether the *agency* agrees to provide workers' compensation insurance for the workers; and
 - (3) Whether the *agency* agrees to indemnify, protect, defend, and hold the City harmless against any and all claims alleged to be caused or caused by any act or omission of the worker or *agency* employee.

("Manager's Authority to Enter Contracts For Inmate Services" added 6-29-1998 by O-18532 N.S.)

§22.3210 Contracts for Services with Agencies and Non-Profit Organizations

The Purchasing Agent may award *contracts for services* with any *agency* or with any non-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code without City Council approval, provided that:

- (a) The Purchasing Agent has certified in writing that the contract furthers a specific public policy; and
- (b) The Purchasing Agent has certified in writing that the contract is in the public interest; and
- (c) The contract does not exceed \$500,000 per year; and
- (d) The Purchasing Agent has considered all of the following:
 - (1) Whether the *agency* or non-profit organization agrees to direct supervision of the workers; and
 - (2) Whether the *agency* or non-profit organization agrees to provide workers' compensation insurance for the workers; and
 - (3) Whether the *agency* or non-profit organization agrees to indemnify, protect, defend, and hold the City harmless against any and all claims alleged to be caused or caused by any act or omission of the worker or *agency* employee.

("Manager's Authority to Enter Contracts for Services with Agencies or Non-Profit Organizations" added 6-29-1998 by O-18532 N.S.)

Article 2: Administrative Code**Division 32: Contracts for Personal Services, Goods, and Consultants***("Contracts for Personal Services, Goods, and Consultants" added 6-29-1998 by O-18532 N.S.)***§22.3201 Purpose and Intent**

This Division establishes requirements for award of contracts other than public works contracts is intended to specify the circumstances under which contracts for Goods, Services and Cooperative Procurement and Consultant contracts may be entered into and whether a contract for Goods, Services and Cooperative Procurement must be competitively bid.

*("Purpose and Intent" added 6-29-1998 by O-18532 N.S.)***§22.3202 Authority to Enter Contracts; Competitive Bid Process Required**

The Purchasing Agent is authorized to enter into contracts ~~upon request~~ on behalf of City departments. ~~Except as provided in Sections 22.3212, 22.3221 and 22.3222,~~ All contracts shall be awarded through a competitive process in accordance with Section 22.3211 unless otherwise provided in this Division. The City Manager may exercise the authority granted to the Purchasing Agent by this Division.

*("Authority to Enter Contracts; Competitive Bid Process Required" added 6-29-1998 by O-18532 N.S.)***§22.3203 Competitive Process for Contracts for Goods and Services**

Except as otherwise provided in Section 22.3208, contracts for goods and contracts for services shall be competitively awarded based on the estimated amount of City funds to be paid to the winning bidder under the contract:

- (a) No competition is required for contracts of \$5,000 or less.
- (b) For contracts greater than \$5,000 but equal to or less than \$10,000, the Purchasing Agent may award the contract but shall seek competitive prices either orally or in writing.
- (c) For contracts greater than \$10,000 but equal to or less than \$50,000, the Purchasing Agent may award the contract but shall solicit written price quotations from at least five potential sources.
- (d) For contracts greater than \$50,000 but equal to or less than \$1,000,000, the Purchasing Agent may award the contract only after advertising it for a

minimum of one day in the City Official Newspaper at least ten days before bids or proposals are due.

- (e) For contracts greater than \$1,000,000, the Purchasing Agent shall advertise for sealed proposals for a minimum of one day in the City Official Newspaper at least ten days before bids or proposals are due.

(Amended 9-3-2002 by O-19095 N.S.)

~~Use of Brand Name in Specifications; Offers of "Or Equals"; Testing~~

- a) ~~Any reference to a specific Brand Name in specifications is illustrative only. A reference to a Brand Name describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.~~
- b) ~~A bidder may offer an equivalent ("or equal") in response to a Brand Name reference. When an "or equal" is offered, the City may test and evaluate the product prior to award of the contract.~~
- c) ~~At bidder's expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the "or equal." At bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.~~

- d) ~~The City reserves the sole right to reject a bid containing any "or equal" offered.~~
e) ~~Exceptions to Section 22.3203(a) (d) are permissible for procurement for replacement parts, or for testing and evaluation purposes or where compatibility with existing City equipment is mandated.~~
"Use of Brand Name in Specifications; Offers of "Or Equals"; Testing"
added 6-29-1998 by O-18532 N.S.)

§22.3204 Subdividing Purchase Prohibited

The Purchasing Agent is prohibited from subdividing into two or more purchases any purchase of ~~g~~Goods or ~~s~~Services for an expenditure of \$50,000 or more that logically should be made as a single transaction if the purpose of the subdividing is to avoid the bidding requirements of the San Diego Municipal Code and the City Charter.
("Subdividing Purchase Prohibited" added 6-29-1998 by O-18532 N.S.)

§22.3205 Civil Service Commission Review

All *contracts for s*Services shall be reviewed by the Civil Service Commission in accordance with Section 23.1801.
("Civil Service Commission Review" added 6-29-1998 by O-18532 N.S.)

§22.3206 Award of Contracts for Goods and Services

- (a) Except as provided in Section 22.3206(b), the Purchasing Agent shall award *contracts for goods* and *contracts for services* to the bidder offering the best value to the City, considering price and other factors. The City may consider the following factors in evaluating which bid or proposal offers the best value to the City: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs (including the costs associated with proprietary invention), experience and responsibility of the bidder, and any additional factors the City deems relevant.
- (b) The Purchasing Agent may award *contracts for goods* and *contracts for services* to the lowest *responsible* and *reliable bidder* if the Purchasing Agent determines that the quality of the goods or services in responsive bids will be substantially equal and that the primary difference between bids will be the price.
- (c) Unless otherwise provided in this Division, *contracts for goods* and *contracts for services* that exceed \$1,000,000 as awarded, amended or extended, must be approved by the City Council.
("Factors to Determine Whether Bid Meets Specifications" added 6-29-1998 by O-18532 N.S.)

§22.3207 Award of Consultant Contracts

- (a) The Purchasing Agent may award a *consultant contract* without City Council approval if:
 - (1) The *consultant contract* and any subsequent amendments cumulatively do not exceed \$250,000; and
 - (2) The total amount of contract awards to the consultant, including the current award, does not exceed \$250,000 in any given fiscal year.
- (b) The Purchasing Agent may award a *consultant contract* for a public works project without City Council approval provided that:
 - (1) The public works project was previously approved and appropriated through the annual capital improvements program (CIP) budget; and
 - (2) The annual CIP budget is the source of funding for the *consultant contract*; and
 - (3) The *consultant contract* and any subsequent amendments cumulatively do not exceed \$1,000,000; and
 - (4) The total amount of contract awards to the consultant, including the current award, does not exceed \$1,000,000 in any given fiscal year.
- (c) All other *consultant contracts* must be approved by the City Council.
("Consultant Contracts" added 6-29-1998 by O-18532 N.S.)
(Amended 1/24/2005 by O-19353 N.S.)

§22.3211 — Contracts Required to be Competitively Awarded

- (a) ~~When a contract provides for an expenditure greater than \$5,000, but equal to or less than \$10,000, the Purchasing Agent may award the contract but shall seek competitive prices either orally or in writing.~~
- (b) ~~When a contract provides for an expenditure greater than \$10,000 but equal to or less than \$50,000, the Purchasing Agent may award the contract but shall solicit written price quotations from at least five potential sources.~~
- (c) ~~When a contract provides for an expenditure greater than \$50,000 but equal to or less than \$1,000,000, the Purchasing Agent may award the contract only after advertising it for a minimum of one day in the City Official Newspaper.~~

- (d) ~~When a contract provides for an expenditure greater than \$1,000,000, the Purchasing Agent shall advertise for sealed proposals for a minimum of one day in the City Official Newspaper and shall obtain the City Council's approval to award the contract.~~
- (e) ~~Maintenance contracts are required to be competitively bid pursuant to Section 22.3211. Maintenance contracts, however, may be awarded to other than the lowest bidder pursuant to Sections 65.0213(b) and 65.0214(e).~~
- ~~(Amended 9-3-2002 by O-19095 N.S.)~~

§22.3212-3208 **Contracts Not Required to be Competitively Bid Awarded**

The following contracts listed in section 22.3212(a) (g) are not required to be competitively bid may be awarded by the Purchasing Agent without advertisement or competition:

- (a) A contract that provides for an expenditure of less than \$5,000;
- (b) A cooperative procurement contract in an amount less than \$10,000;
- (c) A contract necessary to safeguard life, health or property due to extraordinary fire, flood, storm, epidemic or other disaster, provided that:
- (1) The Purchasing Agent immediately reports the emergency award and its justifications to the City Council in writing; and
- (2) The City Council acknowledges and ratifies the award by resolution and a two-thirds vote. A contract to remedy an emergency that affects public health or safety, provided that:
- ~~The Purchasing Agent immediately reports the emergency award and its justifications to the City Council; and~~
- ~~The Council by resolution acknowledges and ratifies the procurement;~~
- (d) A cooperative procurement contract ~~administered~~ awarded by another agency provided- that:
- (1) ~~The City Manager~~ Purchasing Agent certifies in writing that the cooperative procurement contract is in the best interests of the City; and
- (2) ~~The cooperative procurement is to the City's economic advantage; and~~
- (3) The agency's bidding process substantially complies with the City's competitive bidding requirements.
- (e) A sole source contract pursuant to Section 22.3016. If the justification of the sole source contract is the emergency nature of the project, the Purchasing

Agent shall notify the City Council and obtain the City Council's approval pursuant to Section 22.3208(c). A contract that is available from a Sole Source only, if, in advance of the contract, the City Manager certifies in writing in accordance with Section 22.3037 the Sole Source status of the provider;

- (f) Annual blanket purchase orders for an expenditure greater than \$5,000 for commercially available materials and supplies, provided that they are:
 - (1) ~~Required~~ by City forces for immediate completion of work in progress; and
 - (2) ~~Not~~ normally kept in City stores; and
 - (3) Less than \$50,000.
- (g) Contracts for Inmate Services which comply with Section 22.322409.
- (h) Contracts for Services with Agencies or Non-Profit Organizations which comply with Section 22.322210.

("Contracts Not Required to be Competitively Bid" added 6-29-1998 by O-18532 N.S.)

(Amended 1/24/2005 by O-19353 N.S.)

§22.3213 — Factors to Determine Whether Bid Meets Specifications

~~The City may consider the following factors in evaluating whether a bid or proposal best meets City requirements and gains the best economic advantage for the City: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs (including the costs associated with proprietary invention), experience and responsibility of the bidder, and any additional factors the City deems relevant.~~

~~*("Factors to Determine Whether Bid Meets Specifications" added 6-29-1998 by O-18532 N.S.)*~~

§22.322409 — Manager's Authority to Enter Contracts For Inmate Services

~~The City Manager~~Purchasing Agent may enter award a contract for ~~inmate s~~Services without City Council action approval provided that all of the following conditions are met:

- (a) ~~The City Manager~~Purchasing Agent has certified in writing that the contract is in the public interest; and
- (b) The contract does not exceed \$500,000 per year; and
- (c) ~~The City Manager~~Purchasing Agent has considered all of the following:

- (1) ~~Whether~~ the aAgency agrees to direct supervision of the workers; and
- (2) ~~Whether~~ the aAgency agrees to provide workers' compensation insurance for the workers; and
- (3) ~~Whether~~ the aAgency agrees to indemnify, protect, defend, and hold the City harmless against any and all claims alleged to be caused or caused by any act or omission of the worker or aAgency employee.

("Manager's Authority to Enter Contracts For Inmate Services" added 6-29-1998 by O-18532 N.S.)

§22.322210 City Manager's Authority to Enter Contracts for Services with Agencies or and Non-Profit Organizations

The ~~City Manager~~Purchasing Agent may ~~enter award contracts for sServices~~ with any aAgency or with any non-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code without City Council action approval, provided that all of the following conditions are met:

- (a) The ~~City Manager~~Purchasing Agent has certified in writing that the contract furthers a specific public policy; and
- (b) The ~~City Manager~~Purchasing Agent has certified in writing that the contract is in the public interest; and
- (c) The contract does not exceed \$500,000 per year; and
- (d) The ~~City Manager~~Purchasing Agent has considered all of the following:
 - (1) ~~Whether~~ the aAgency or non-profit organization agrees to direct supervision of the workers; and
 - (2) ~~Whether~~ the aAgency or non-profit organization agrees to provide workers' compensation insurance for the workers; and
 - (3) ~~Whether~~ the aAgency or non-profit organization agrees to indemnify, protect, defend, and hold the City harmless against any and all claims alleged to be caused or caused by any act or omission of the worker or aAgency employee.

("Manager's Authority to Enter Contracts for Services with Agencies or Non-Profit Organizations" added 6-29-1998 by O-18532 N.S.)

§22.3223 — Consultant Contracts

Except as otherwise provided by Charter or ordinance, the City Manager may enter a ~~contract~~ with a *Consultant* to perform work or give advice without first seeking Council approval provided that both of the following conditions exist:

- (a) — ~~the contract~~ and any subsequent amendments do not exceed \$250,000 in any given fiscal year; and
- (b) — the total amount of ~~contract~~ awards to the *Consultant*, including the current ~~award~~, in any given fiscal year does not exceed \$250,000.

~~("Consultant Contracts" added 6-29-1998 by O-18532 N.S.)
(Amended 1/24/2005 by O-19353 N.S.)~~

§22.3224 — Contractor Standards

- (a) — Prior to awarding a ~~contract~~ greater than \$50,000, the City shall make a determination that the *bidder* has the capability to fully perform the contract requirements and the business integrity to justify the award of public tax dollars. Among the factors to be considered are: (1) financial resources, including financial sufficiency under California Labor Code Section 2810; (2) technical qualifications; (3) experience; (4) material, equipment, and expertise necessary to carry out the work; (5) a satisfactory record of performance; and (6) a satisfactory record of compliance with applicable statutes and regulations.
- (b) — As part of its bid, proposal, or other application for a ~~contract~~, a *bidder* will be required to submit a response, under penalty of perjury, that will seek to determine if the *bidder* meets the standards set forth in paragraph (a) of this Section.
- (c) — During the term of a ~~contract~~, the contractor shall comply with all applicable local, state and federal laws, including health and safety, labor and employment, and licensing laws, that affect the employees, worksite or performance of the ~~contract~~. Each contractor shall notify the Purchasing Agent within fifteen calendar days upon receiving notification that a government agency has begun an investigation of the contractor that may result in a finding that the contractor is or was not in compliance with said laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by the contractor. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by an awarding authority.

- (d) — Upon ~~award~~, amendment, renewal, or extension of a ~~contract~~, contractors shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with this section. Contractors shall ensure that their subcontractors whose subcontracts are greater than \$50,000 in value complete a Pledge of Compliance attesting under penalty of perjury to compliance with this section.
- (e) — Violations of this Article may be reported to the City Manager who shall investigate such complaint. Whether based upon such complaint or otherwise, if the City has determined that the contractor has violated any provision of this Article, the City shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the City Manager may do one or both of the following:
- (1) — Declare a material breach of the ~~contract~~ and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the ~~contract~~; or
- (2) — Declare the contractor to be non-responsible in accordance with the procedures set forth in subsection (f) of this section.
- (f) — Before declaring a contractor non-responsible, the City Manager shall notify the contractor of the proposed determination of non-responsibility, serve a summary of the information upon which the determination is based, and provide the contractor with an opportunity to be heard in accordance with applicable law. Upon request, the contractor is entitled to a hearing before the City's Budget and Finance Committee. At such hearing, the contractor will be allowed to rebut adverse information and to present evidence that the contractor has the necessary quality, fitness and capacity to perform the work. The Budget and Finance Committee shall make a determination upholding or rejecting the City Manager's declaration, and shall forward its determination to the City Council for review and approval or rejection. A determination by the City Council shall be final and constitute exhaustion of the contractor's administrative remedies.

(g) ~~The Purchasing Agent shall maintain a list of contractors that have been determined to be non-responsible by the City. After two years from the date the contractor has been determined to be non-responsible, the contractor may request removal from the list by the City Manager. If the contractor can satisfy the City Manager that the contractor has the necessary quality, fitness, and capacity to perform work in accordance with the criteria set forth in subsection (a) of this section, its name shall be removed from the list. Unless otherwise removed from the list by the City Manager, names shall remain on the list for five years from the date of declaration of non-responsibility.~~

(h) ~~This section applies to all contracts, Consultant agreements, Maintenance Contracts and Public Works Contracts~~

~~(Added 5-24-2005 by O-19383 N.S.)~~

~~(Amended 11-24-08 by O-19808 N.S.; effective 12-24-2008.)~~

Article 2: Administrative Code**Division 33: Design-Build Contracts***("Design-Build Contracts"*
*added 4-12-1999 by O-18631 N.S.)***§22.3301 Purpose and Intent**

The purpose of this Division is to provide definitions and guidelines for the award, use, and evaluation of *design-build* contracts.

("Purpose and Intent" added 4-12-1999 by O-18631 N.S.)

§22.3302 Definitions

All defined terms in this Division appear in italics. For the purposes of this Division, the following definitions apply:

Design-build means a public works contract procurement method in which both the design and construction of a project are procured from a single entity.

Design-build entity means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services on a *public works project*.

Design-build entity member includes any person who provides licensed contracting, architectural, or engineering services.

("Definitions" added 4-12-1999 by O-18631 N.S.)

§22.3303 Design-Build Procurement

(a) For purposes of this Division only, prior to procuring a *design-build public works contract*, the City shall prepare a request for proposal or invitation to bid setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the buildings and site, and performance specifications. The performance specifications shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the City's needs. The performance specifications shall be prepared by a design professional designated by the City. Nothing in this Division precludes a *design-build* contract from being awarded without competition pursuant to Section 22.3108.

(b) Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the development of criteria or preparation of the request for proposals or invitation to bid shall not be eligible to participate in the competition with any *design-build entity*.

("Design-Build Procurement" added 4-12-1999 by O-18631 N.S.)

§22.3304 Competitive Prequalification and Selection Process

The City may issue a request for qualifications to establish a competitive prequalification and selection process to determine which *design-build entities* are the most qualified and eligible to respond to a request for *design-build* proposals or invitation to bid.

(*"Competitive Prequalification and Selection Process"* added 4-12-1999 by O-18631 N.S.)

§22.3305 Prequalification Criteria

The City may consider all or any combination of the following criteria in prequalifying *design-build entities*:

- (a) Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.
- (b) Submission of documentation establishing that the *design-build entity members* have completed, or demonstrated the capability to complete, projects of similar size, scope, building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.
- (c) Submission of a proposed project management plan establishing that the *design-build entity* has the experience, competence, and capacity needed to effectively complete the project.
- (d) Submission of evidence establishing that the *design-build entity* has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the City that the *design-build entity* has the capacity to complete the project.
- (e) Provision of a declaration that the applying members of the *design-build entity* have not had a surety company finish work on any project within the past five years.
- (f) Provision of a declaration providing detail for the past five years concerning all of the following:
 - (1) Civil or criminal violations of the Occupational Safety and Health Act against any member of the *design-build entity*.
 - (2) Civil or criminal violations of the Contractors' State License Law against any member of the *design-build entity*.
 - (3) Any conviction of any member of the *design-build entity* of submitting a false or fraudulent claim to a public agency.

- (4) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements against any member of the *design-build entity*. For purposes of Section 22.3305(f)(4), only violations by a *design-build entity member*, as an employer shall be deemed applicable, unless it is shown that the *design-build entity member*, in his or her capacity as an employer, had knowledge of a subcontractor's violations or failed to comply with the conditions set forth in Section 1775(b) of the California Labor Code.
- (5) Civil or criminal violations of federal or state law against any *design-build entity member* governing equal opportunity employment, contracting or subcontracting.
- (g) Provision of a declaration that the *design-build entity* will comply with all other provisions of law applicable to the project. The declaration shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge.
(*"Prequalification Criteria" added 4-12-1999 by O-18631 N.S.*)

§22.3306 Equal Employment Opportunity Outreach Program

Design-build entities are "contractors" within the meaning of Chapter 2, Article 2, Division 27 of this Code, and shall comply with the City's equal employment opportunity outreach program and any related requirements in the *design-build* contract.

(*"Documentation of Outreach Programs" added 4-12-1999 by O-18631 N.S.*)

§22.3307 False Declaration Unlawful

It is unlawful to submit any declaration under this Division containing any material matter that is false.

(*"False Declaration Unlawful" added 4-12-1999 by O-18631 N.S.*)

§22.3308 Selection Method

The City shall select one of the following methods as the process to be used for the selection of the winning entity:

- (a) A *design-build* competition where award is made to the *design-build entity* whose proposal offers the best value to the City considering price and the evaluation criteria in the request for proposals.
 - (1) The City shall issue a request for proposals describing the project and any performance requirements and specifications the City deems

necessary. The City may include preliminary designs and drawings detailing the requirements of the project.

- (2) The request for proposals shall establish evaluation criteria and a methodology that the City will use to evaluate proposals. Criteria may include, but are not limited to, proposed design approach, project cost, initial and/or life-cycle costs, project features, financing, quality, capacity, schedule, and operational and functional performance of the facility. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the request for *design-build* proposals.
- (b) A *design-build* competition based on program requirements and a detailed scope of work, including any preliminary design drawings and specifications set forth by the City in the invitation to bid.
- (1) Award shall be made on the basis of the lowest responsible and reliable bid.
- (c) An emergency or sole source award of a *design-build* contract without competition pursuant to Section 22.3108.
(*"Selection Method" added 4-12-1999 by O-18631 N.S.*)

§22.3309 Work Listing

The City recognizes that the *design-build entity* is charged with performing both design and construction. Because a *design-build* contract may be awarded prior to the completion of the design, it is often impracticable for the *design-build entity* to list all subcontractors at the time of the award.

- (a) It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this Division in a manner that retains protection for subcontractors while allowing *design-build* projects to be administered in an efficient fashion.
- (b) All of the following requirements shall apply to subcontractors, licensed by the state, that are employed on *design-build* projects undertaken pursuant to this Division.
 - (1) The *design-build entity* in each *design-build* proposal shall specify the construction trades or types of subcontractors that may be named as members of the *design-build entity* at the time of award. In selecting the trades that may be identified as members of the *design-build entity*, the *design-build entity* shall identify the trades deemed essential in the design considerations of the project. All subcontractors that are listed at the time of award shall be afforded the protection of all applicable laws.

- (2) All subcontracts that were not listed by the *design-build entity* at the time of award in accordance with Section 22.3309(b)(1) shall be performed and awarded by the *design-build entity*, in accordance with a bidding process set forth in the request for *design-build* proposals.
(“Work Listing” added 4-12-1999 by O-18631 N.S.)

§22.3310 Multiple Award Design-Build Contracts

The City may award *design-build* contracts to more than one *design-build entity* in which the *design-build entities* compete for public works projects on a *task order* basis, provided that:

- (a) The City issues a request for qualifications or proposals generally describing the types of public works projects anticipated to be performed under the multiple award *design-build* contracts, and the evaluation criteria to be used to determine which *design-build entities* will be awarded contracts.
- (b) Only the *design-build entities* awarded multiple award *design-build* contracts are eligible to compete for the public works projects submitted to them by the City, with the winning *design-build entity* determined in accordance with Section 22.3308. The winning *design-build entity* is awarded the *public works contract* through the issuance of a *task order*.
- (c) Multiple award *design-build* contracts shall provide for a period of up to three years of competition for task orders. The contracts may continue for a period longer than three years only as necessary to complete outstanding *task orders*.
- (d) No contract may guarantee a *design-build entity* cumulative *task orders* in excess of \$50,000.
- (e) A *task order* may not exceed \$[10M] without City Council approval.
- (f) The cumulative amount of *task orders* issued to all *design-build entities* awarded contracts through each request for qualifications or proposals may not exceed \$[100M] without City Council approval.

Article 2: Administrative Code**Division 33: Design-Build Contracts**

*("Design-Build Contracts"
added 4-12-1999 by O-18631 N.S.)*

§22.3301 Purpose and Intent

The purpose of this Division is to provide definitions and guidelines for the award, use, and evaluation of *design-build* contracts.

("Purpose and Intent" added 4-12-1999 by O-18631 N.S.)

§22.3302 Definitions

All defined terms in this Division appear in italics. For the purposes of this Division, the following definitions apply:

"Design-build" means a public works contract procurement method in which both the design and construction of a project are procured from a single entity.

"Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services ~~as needed~~ on a *public works project*.

"Design-build entity member" includes any person who provides licensed contracting, architectural, or engineering services.
("Definitions" added 4-12-1999 by O-18631 N.S.)

§22.3303 Design-Build Procurement

(a) For purposes of this Division only, prior to procuring a ~~d~~*Design-build public works contract*, the City shall prepare a request for proposal or invitation to bid setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the buildings and site, and performance specifications. -The performance specifications shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the City's needs. -The performance specifications shall be prepared by a design professional designated by the City. Nothing in this Division precludes a *design-build* contract from being awarded without competition pursuant to Section 22.3108.

(b) Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the development of criteria or preparation of the request for proposals or invitation to bid shall not be eligible to participate in the competition with any *design-build entity*.

("Design-Build Procurement" added 4-12-1999 by O-18631 N.S.)

§22.3304 Competitive Prequalification and Selection Process

The City may issue a request for qualifications to establish a competitive prequalification and selection process to determine which~~for *dDesign-bBuild eEntities* are the most qualified and eligible to respond to a request for *design-build* proposals or invitation to bid~~that specifies the prequalification criteria, as well as recommends the manner in which the winning entity will be selected. Nothing in this Division precludes a *Design-Build* contract from being awarded to a *Sole Source*, if, in advance of the contract, the City Manager certifies in writing the Sole Source status of the provider.

("Competitive Prequalification and Selection Process" added 4-12-1999 by O-18631 N.S.)

§22.3305 Prequalification Criteria

~~Prequalification~~The City may be limited to consideration of all or any combination of the following criteria ~~supplied in prequalifying by a *dDesign-bBuild eEntity*~~sy:

- (a) Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.
- (b) Submission of documentation establishing that the *dDesign-bBuild eEntity* members have completed, or demonstrated the capability to complete, projects of similar size, scope, building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.
- (c) Submission of a proposed project management plan establishing that the *dDesign-bBuild eEntity* has the experience, competence, and capacity needed to effectively complete the project.
- (d) Submission of evidence establishing that the *dDesign-bBuild eEntity* has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the City that the *dDesign-bBuild eEntity* has the capacity to complete the project.
- (e) Provision of a declaration that the applying members of the *dDesign-bBuild eEntity* have not had a surety company finish work on any project within the past five years.
- (f) Provision of a declaration providing detail for the past five years concerning all of the following:

- (1) Civil or criminal violations of the Occupational Safety and Health Act against any member of the dDesign-bBuild eEntity.
- (2) Civil or criminal violations of the Contractors' State License Law against any member of the dDesign-bBuild eEntity.
- (3) Any conviction of any member of the dDesign-bBuild eEntity of submitting a false or fraudulent claim to a public agency.
- (4) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements against any member of the dDesign-bBuild eEntity. For purposes of Section 22.3305(f)(4), only violations by a dDesign-bBuild eEntity mMember, as an employer shall be deemed applicable, unless it is shown that the dDesign-bBuild eEntity mMember, in his or her capacity as an employer, had knowledge of a subcontractor's violations or failed to comply with the conditions set forth in Section 1775(b) of the State-California Labor Code.
- (5) Civil or criminal violations of federal or state law against any dDesign-bBuild eEntity mMember governing equal opportunity employment, contracting or subcontracting.
- (g) Provision of a declaration that the dDesign-bBuild eEntity will comply with all other provisions of law applicable to the project. The declaration shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge.
(*"Prequalification Criteria" added 4-12-1999 by O-18631 N.S.*)

§22.3306

Documentation of Equal Employment Opportunity Outreach Programs

The Design-bBuild eEntities are "contractors" within the meaning of Chapter 2, Article 2, Division 27 of this Code, and shall comply with the City's equal employment opportunity outreach program and any related requirements in the design-build contract. ~~shall provide documentation of its subcontractor and employment outreach program to all subcontractors in the required disciplines of the project.~~

(*"Documentation of Outreach Programs" added 4-12-1999 by O-18631 N.S.*)

§22.3307 False Declaration Unlawful

It is unlawful to submit any declaration under this Division containing any material matter that is false.

("False Declaration Unlawful" added 4-12-1999 by O-18631 N.S.)

§22.3308 Selection Method

The City shall select one of the following methods as the process to be used for the selection of the winning entity:

(a) A ~~d~~Design-~~b~~Build competition where award is made to the design-build entity whose proposal offers the best value to the City considering price and the evaluation criteria in the request for proposals.

(1) The City shall issue a request for proposals describing the project and ~~any based on performance requirements and, specifications, and criteria set forth by the City in the request for proposals~~ deems necessary. The City may include preliminary designs and drawings detailing the requirements of the project.

(2) The request for proposals shall establish evaluation criteria and a methodology that the City will use to evaluate proposals. Criteria used in this form of evaluation of proposals may include, but are not be limited to, items such as proposed design approach, project cost, initial and/or life-cycle costs, project features, financing, quality, capacity, schedule, and operational and functional performance of the facility. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the request for ~~d~~Design-~~b~~Build proposals.

(3) Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the development of criteria or preparation of the request for proposals shall not be eligible to participate in the competition with any Design-Build Entity.

(4) Award shall be made to the Design-Build Entity whose proposal is judged as providing best value meeting the interests of the City and meeting the objectives of the project.

(b) A Design-Build competition based on program requirements, performance specifications, and a preliminary design or combination thereof set forth by the City in the request for proposals. Limited drawings and specifications detailing the requirements of the project may accompany the request for proposals.

(1) The City shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology of evaluation and selection in the request for Design-Build proposals.

- (2) ~~Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any *Design-Build Entity*.~~
- (3) ~~Award shall be made to the *Design-Build Entity* on the basis of the technical criteria and methodology, including price, whose proposal is judged as providing best value in meeting the interests of the City and meeting the objectives of the project.~~
- (be) A ~~*dDesign-bBuild*~~ competition based on program requirements and a detailed scope of work, including any preliminary design drawings and specifications set forth by the City in the ~~request for proposals~~ invitation to bid.
- (1) ~~Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any *Design-Build Entity*.~~
- (2) ~~Award shall be made on the basis of the lowest responsible and reliable bid.~~
- (cd) A ~~"Sole Source" award as otherwise allowed by law~~ An emergency or sole source award of a *design-build* contract without competition pursuant to Section 22.3108.
(*"Selection Method" added 4-12-1999 by O-18631 N.S.*)

§22.3309 Work Listing

The City recognizes that the ~~*dDesign-bBuild eEntity*~~ is charged with performing both design and construction. Because a ~~*dDesign-bBuild*~~ contract may be awarded prior to the completion of the design, it is often impracticable for the ~~*dDesign-bBuild eEntity*~~ to list all subcontractors at the time of the award.

- (a) It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this Division in a manner that retains protection for subcontractors while ~~enabling~~ allowing ~~*dDesign-bBuild*~~ projects to be administered in an efficient fashion.
- (b) All of the following requirements shall apply to subcontractors, licensed by the state, that are employed on ~~*dDesign-bBuild*~~ projects undertaken pursuant to this Division.

- (1) The *dDesign-bBuild eEntity* in each *dDesign-bBuild* proposal shall specify the construction trades or types of subcontractors that may be named as members of the *dDesign-bBuild eEntity* at the time of award. In selecting the trades that may be identified as members of the *dDesign-bBuild eEntity*, the *dDesign-bBuild eEntity* shall identify the trades deemed essential in the design considerations of the project. All subcontractors that are listed at the time of award shall be afforded the protection of all applicable laws.
- (2) All subcontracts that were not listed by the *dDesign-bBuild eEntity* at the time of award in accordance with Section 22.3309(b)(1) shall be performed and awarded by the *dDesign-bBuild eEntity*, in accordance with a bidding process set forth in the request for *dDesign-bBuild* package proposals.

("Work Listing" added 4-12-1999 by O-18631 N.S.)

§22.3310 Multiple Award Design-Build Contracts

The City may award *design-build* contracts to more than one *design-build entity* in which the *design-build entities* compete for public works projects on a *task order* basis, provided that:

- (a) The City issues a request for qualifications or proposals generally describing the types of public works projects anticipated to be performed under the multiple award *design-build* contracts, and the evaluation criteria to be used to determine which *design-build entities* will be awarded contracts.
- (b) Only the *design-build entities* awarded multiple award *design-build* contracts are eligible to compete for the public works projects submitted to them by the City, with the winning *design-build entity* determined in accordance with Section 22.3308. The winning *design-build entity* is awarded the *public works contract* through the issuance of a *task order*.
- (c) Multiple award *design-build* contracts shall provide for a period of up to three years of competition for task orders. The contracts may continue for a period longer than three years only as necessary to complete outstanding *task orders*.
- (d) No contract may guarantee a *design-build entity* cumulative *task orders* in excess of \$50,000.
- (e) A *task order* may not exceed \$[10M] without City Council approval.

- (f) The cumulative amount of *task orders* issued to all *design-build entities* awarded contracts through each request for qualifications or proposals may not exceed \$[100M] without City Council approval.

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

POLICY:

It is the policy of the City Council to require each recognized community planning group, as a condition of official recognition by the City of San Diego, to submit a copy of its own operating procedures and responsibilities, otherwise known as "bylaws," to the City. These bylaws must contain, at a minimum, all the provisions addressed in this Policy, and conform to the criteria contained herein, including the standardized bylaws shell attached to this Policy. Individual planning groups' bylaws may utilize options within the standardized bylaws shell and may also expand on provisions in this Policy to better meet the needs of diverse communities. However, all bylaws must remain in conformance with the provisions of this Policy to maintain official recognition by the City. The original bylaws for each planning group and the initial members and terms of each planning group seat and member will be submitted for approval by resolution of the City Council.

Community planning groups that are also incorporated under the laws of the State of California shall maintain corporate bylaws separate from the planning group bylaws.

Subsequent amendments to adopted bylaws may be proposed to the City by a majority vote of the elected membership of a community planning group. Amendments shall be approved by the Mayor's Office and City Attorney if determined to conform with this Policy. Bylaws amendments that cannot be approved by the Mayor's Office and City Attorney will be taken to the City Council for consideration. A planning group's proposed revisions to their adopted bylaws, to bring them into conformity with the 2007 revisions to this Policy, to the extent such bylaws are inconsistent with this Policy, do not go into effect, and may not be used by the planning group, until the City has approved the bylaws and has notified the planning group of the effective date of the amendment. Failure of a planning group to comply with the approved operating procedures and responsibilities will be cause for the City Council to withdraw official recognition.

Planning groups must utilize Council Policy 600-24 and their adopted bylaws to guide their operations. City staff is assigned to prepare and maintain Administrative Guidelines in consultation with the Community Planners Committee. The Administrative Guidelines are intended to explain this Policy's minimum standard operating procedures and responsibilities of planning groups. The Administrative Guidelines provide the planning groups with explanations and recommendations for individually adopted bylaws and planning group procedures. Robert's Rules of Order Newly Revised should be used when this Policy, the Administrative Guidelines, and planning group bylaws do not address an area of concern or interest. It is also the policy of the City Council that the City shall indemnify, and the City Attorney shall defend, a recognized community planning group or its individual members in accordance with Ordinance No. O-17086 NS entitled "An Ordinance Providing for Legal Representation to and Indemnification of Community Planning Committees Against Claims for Damages," as discussed further in Article X, Section 1, and any future amendments thereto.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

The intent of the Brown Act, as stated in section 45950, is that the actions of public bodies, "... be taken openly and that their deliberations be conducted openly . . ." This is consistent with the goals of the City and planning groups operating pursuant to this Policy. Accordingly, community planning groups shall ensure that all meetings are open to the public, properly noticed, and conducted in compliance with each of the Brown Act provisions as identified in this Policy.

ARTICLE I Name

- Section 1. A recognized community planning group shall adopt an official name which shall be subject to the approval of the City Council.
- Section 2. All activities of a recognized community planning group shall be conducted in its official name.
- Section 3. A boundary for a recognized community planning group's area of authority is based on the boundary of the applicable adopted community plan. The boundary is intended to give a planning group the advisory responsibilities over an area that has been established based on logical, man-made, or geographic boundaries. In some cases, the City Council may determine that a boundary other than that of an adopted plan is the appropriate boundary for a planning group's oversight, and may identify an area either smaller than, or more encompassing than, an adopted community plan.

The community planning area boundaries which are applicable to each recognized community planning group shall be shown on a map to be included in the bylaws as Exhibit "A."

In accordance with Brown Act section 54954(b), meetings of recognized community planning groups shall be held within these boundaries. When however a community planning group does not have a meeting facility within its boundary that is accessible to all members of the public, they may meet at the closest meeting facility.

- Section 4. The official positions and opinions of a recognized community planning group shall not be established or determined by any organization other than the planning group, nor by any individual member of the planning group other than one authorized to do so by the planning group.

ARTICLE II Purpose of Community Planning Group and General Provisions

- Section 1. Community planning groups have been formed and recognized by the City Council to make recommendations to the City Council, Planning Commission,

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City staff and other governmental agencies on land use matters, specifically, concerning the preparation of, adoption of, implementation of, or amendment to, the General Plan or a land use plan when a plan relates to each recognized community planning group's planning area boundaries. Planning groups also advise on other land use matters as requested by the City or other governmental agency.

Pursuant to the provisions of Council Policy 600-33, a recognized community planning group will be asked to review a general development plan for a park if that plan is accompanied by a general or land use plan amendment that the planning group would normally review under authority of this policy. If there is no recreation council or open space citizen advisory committee overseeing a particular park or open space area, then the planning group may be asked to provide the forum for community review and a recommendation for a general development plan without a general or land use plan amendment.

Section 2. A recognized community planning group reviewing individual development projects should focus such review on conformity with the adopted Community Plan and/or the General Plan. Preliminary comments on projects may be submitted to the City during the project review process. Whenever possible, a formal planning group recommendation should be submitted no later than the end of the public review period offered by the environmental review process.

Substantive changes in projects subsequent to completion of the environmental review process will sanction further evaluation by the planning group. This will provide staff and the project applicant the opportunity to respond to the comments or concerns and potentially resolve possible conflicts before the project is noticed for discretionary action.

Section 3. Insofar as the efforts of the recognized community planning group are engaged in the diligent pursuit of the above purpose, City staff assistance, if any, shall be provided under the direction of the Mayor's Office.

Section 4. All activities of recognized community planning groups shall be nonpartisan and nonsectarian and shall not discriminate against any person or persons by reason of race, color, sex, age, creed or national origin, or sexual orientation, or physical or mental disability. In addition, Brown Act section 54953.2 requires that meeting facilities must be accessible to persons with disabilities.

Section 5. A recognized community planning group shall not take part in, officially or unofficially, or lend its influence in, the election of any candidate for political office. Planning group members shall not identify affiliation with a planning

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group when endorsing candidates for public office. A planning group may take a position on a ballot measure.

- Section 6. Pursuant to the provisions of City Council Policy 600-5, a recognized community planning group's consistent failure to respond to the City's request for planning group input on the preparation of, adoption of, implementation of, or amendment to, the General Plan or a community, precise, or specific plan, or failure to review and reply to the City in a timely manner on development projects shall result in the forfeiture of rights to represent its community for these purposes. Such a determination resulting in the forfeiture of rights to represent its community for these purposes shall be made only by the City Council upon the recommendation of the Mayor's office.
- Section 7. A recognized community planning group may propose amendments to its bylaws by majority vote of the elected members of the group. Proposed amendments shall be submitted to the offices of the Mayor and to the City Attorney, respectively, for review and approval. Any proposed amendments that are inconsistent with the standardized bylaws shell, attached to this Policy, shall be scheduled for consideration by City Council.

ARTICLE III Community Planning Group Organizations

- Section 1. A recognized community planning group shall consist of a specific number of members that is not fewer than 12 nor more than 20, provided, however, that when a larger membership shall give better representation to a community, the City Council may approve such larger membership. Upon recognition by the City Council, the members of the planning groups shall constitute the official planning group for the purposes set forth in Article II.
- Section 2. The members of the recognized community planning group shall consist of the members as of the date of recognition by the City Council, and of such additional members as shall thereafter be elected by eligible community members in the manner prescribed by this Policy.
- Section 3. Members of recognized community planning groups shall, to the extent possible, be representative of the various geographic sections of the community and diversified community interests. Planning group members shall be elected by and from eligible members of the community. To be an eligible community member an individual must be at least 18 years of age, and shall be affiliated with the community as a:
- (1) property owner, who is an individual identified as the sole or partial owner of record, or their designee, of a real property (either developed or undeveloped), within the community planning area, or

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- (2) resident, who is an individual whose primary address of residence is an address in the community planning area, or
- (3) local business person, who is a local business owner, operator, or designee at a non-residential real property address in the community planning area.

Demonstration of individual eligibility to vote as a property owner, resident, or local business person, as described in (1) through (3) above, may be achieved through an application showing evidence of qualifications. Eligibility (and demonstration of eligibility) to vote may be further defined in planning group bylaws. This may include minimum attendance requirements. Once eligibility to vote in an election is established, an individual remains eligible until he or she does not meet the eligibility requirements.

Section 4. Members of a recognized community planning group shall be elected to serve for fixed terms of two to four years with expiration dates during alternate years to provide continuity. This can vary for the purpose of the selection of initial group members for new groups. No person may serve on a planning group for more than eight consecutive years if members are elected to two- or four-year terms, or nine consecutive years if members are elected to three-year terms. The eight or nine year limit refers to total service time, not to individual seats held. After a one-year break in service as a planning group member, an individual who had served for eight or nine consecutive years shall again be eligible for election to the committee.

This Policy provides an exception for a planning group to retain some members who have already served for eight or nine consecutive years to continue on the planning group without a break in service if not enough new members are found to fill all vacant seats as follows:

A planning group member who has served eight or nine consecutive years may appear on the ballot with new candidates. After open seats are filled with qualified new members, and if open seats still remain, the following provisions may be utilized: A member may serve in excess of eight or nine consecutive years (as specified above) if that person is reelected to a remaining open seat by at least a two-thirds majority of the votes cast by eligible community members participating in the regular election. The number of individuals on a planning group serving more than eight or nine consecutive years shall in no case exceed twenty-five percent of the voting committee membership.

The term of a member elected by a two-thirds vote serving beyond eight or nine years shall count as time served beyond the required break in service as required by this section. Future consecutive election of the member who has served beyond eight or nine years is subject to the requirements of this section.

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Section 5. A member of a recognized community planning group must retain eligibility during the entire term of service. A planning group member may be removed from the planning group, upon a majority vote of the planning group, if, during a regularly scheduled public meeting, the Secretary presents documentation to the planning group and has notified the member in question that the member is no longer eligible to serve. Ineligibility may be due to not meeting the membership qualifications found in Article III, Section 3 or Article IV, Section 1 of this Council Policy and in the group's adopted bylaws.

Section 6. A planning group member or planning group found to be out of compliance with the provisions of this Policy, or the planning group's adopted bylaws, risks loss of indemnification [legal protection and representation] pursuant to Ordinance No. O-17086 NS, and any future amendments thereto.

Violations of the Brown Act may, in some circumstances, carry civil or criminal consequences as described in this Policy at Article IX, Section 2. However, as stated in a memorandum prepared by the City Attorney, by implementing bylaws and operating in compliance with this Policy, planning groups will be considered to be in substantial compliance with the Brown Act. (City Att'y MOL No. 2006-26)

ARTICLE IV Vacancies

Section 1. A recognized community planning group shall find that a vacancy exists upon receipt of a resignation in writing from one of its members, or upon receipt of a written report from its secretary reporting the third consecutive absence, or fourth absence in the 12-month period of April through March each year, of a member(s) from regular meeting as established under Article VI, Section 2 below.

Section 2. A single vacancy that occurs on a recognized community planning group shall be filled by the planning group in a manner specified by the bylaws of the planning group.

Two or more concurrent community planning group vacancies shall be filled by a vote of all eligible members of the community by secret written ballot. Vacancies shall be filled no later than 120 days, following the date of the determination of the vacancy, unless the end of the 120 day period would occur within 90 days of the annual March election as described in Article V.

The term of office of any member filling a vacancy in accordance with the procedure established in Article III, Section 4 above shall be for the balance of the vacated term.

Section 3. When a recognized community planning group is unable to fill a vacancy within the 120 days, as specified above, and the planning group has more than twelve

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members, the planning group shall either leave the seat vacant until the next planning group election, or amend its bylaws to permit decreased membership to a minimum of twelve members. If a vacancy remains for more than 60 days from the time a vacancy is declared, and the planning group has less than 12 members in good standing, the planning group shall report in writing the efforts made to fill the vacancy to the City. If, after 60 additional days, the planning group membership has not reached 12 members, the planning group will be deemed inactive and the City shall notify the City Council that the planning group will be inactive until it has attained at least 12 members in good standing. The City shall assist with the planning group election in the attempt to regain the minimum Policy membership requirement of 12 members.

ARTICLE V Elections

Section 1. Elections of recognized community planning group members shall be held during the month of March in accordance with procedures specified in adopted planning group bylaws. Planning groups shall hold elections every year or every other year. In the election process, the planning group shall seek enough new candidates to exceed the number of seats open for election in order to allow those who have served for eight or nine consecutive years to leave the group for at least one year.

In order to be a candidate in the March election, an eligible member of the community must have documented attendance at three of the planning group's last 12 meetings prior to the February regular meeting preceding the election.

Planning groups may establish voting procedures that include opportunities for multiple voting times on the date of the election, or for multiple locations, or both, provided those procedures allow for the completion of the election during the month of March and they demonstrate an ability to assure fair access and avoidance of voting improprieties. Where an opportunity to vote on more than one date is proposed, then the voting procedures for such an election shall be submitted, at least forty-five (45) days in advance of the first day that voting is proposed to occur, to the office of the Mayor and to the City Attorney, respectively, for review and approval. All voting procedures must insure that voting is done only by eligible members of the community.

Section 2. The City shall publicize the elections of recognized community planning groups through the City website, City TV24 programming, electronic mail, the City's webpage, and other available effective means.

The planning group shall make a good faith effort to utilize means appropriate to their communities to publicize the planning group's eligibility requirements for candidacy and the upcoming elections.

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- Section 3. Voting shall be by secret written ballot. Recognized community planning groups may establish bylaw provisions to address procedures for mailing in ballots for elections if the planning group determines that this procedure, or another specified procedure, would increase community participation in the election process. Under no circumstances is proxy voting for elections allowed. At a minimum, ballots shall be available for a specified period at the noticed planning group meeting at which the election will be held.
- Section 4. Unless otherwise explicitly provided for in a recognized community planning group's bylaws, an election becomes final after announcing the election results at a noticed planning group meeting. New members shall be seated in April.

ARTICLE VI Community Planning Group and Planning Group Member Duties

- Section 1. It shall be the duty of a recognized community planning group to cooperatively work with the Mayor's staff throughout the planning process, including but not limited to the formation of long-range community goals, objectives and proposals or the revision thereto for inclusion in a General or Community Plan.

In accordance with the Brown Act section 54953(a) it shall be the duty of all recognized community planning group members to meet in open and in public, and all persons shall be permitted to attend any meeting of the planning group except as otherwise noted in this Policy.

The community planning group members shall conduct official business of the planning group in a public setting. It is recognized that the officers of the planning group may oversee administrative business of the planning group, such as the assembling of the draft agenda, in preparation for public discussions. However, all substantive discussions about agenda items or possible group positions on agenda items shall occur at the noticed planning group meetings.

It shall be the duty of a planning group as a whole, and of each individual planning group member, to refrain from conduct that is detrimental to the planning group or its purposes under this Policy. No member shall be permitted to disturb the public meeting so as to disrupt the public process as set forth on the planning group's agenda.

- Section 2. Recognized community planning groups and planning group members are responsible for assuring compliance of meeting procedures and meeting records requirements under this Policy.

(a) Meeting Procedures

It shall be the duty of each recognized community planning group member to attend all planning group meetings.

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- (1) **Regular Agenda Posting.** In accordance with Brown Act section 54954.2(a), at least 72 hours before a regular meeting, the agenda containing a brief general description of each agenda item. The brief general description of each agenda item need not exceed 20 words per item unless the item is complex. The agenda shall also provide notice of the date, time, and location of the meeting. The agenda shall be posted in a place freely accessible to the general public and shall include information on how a request for accessible accommodation may be made.

The listing of an agenda item shall include the intended action of the planning group regarding that item, for example, stating that the item is an information item only or it is an action item.

(2) **Public Comment.**

1. **Agenda Items:** Any interested member of the public may comment on agenda items during regular or special planning group meetings. (Brown Act section 54954.3(a))
2. **Non Agenda Items:** Each agenda for a regular planning group meeting shall allow for a public comment period at the beginning of the meeting for items not on the agenda, but that are within the scope of the planning group. (Brown Act section 54954.3(a)) Planning group members may respond by asking for more factual information, or by asking a question to clarify, and also may schedule the item for a future agenda. However, no discussion, debate, or action may be taken on such items. (Brown Act section 54954.2)
3. A planning group may adopt time limits for individual items and for individual speakers to ensure operational efficiencies but such time limits must be reasonable and give competing interests equal time. (Brown Act section 54954.3(b))

- (3) **Adjournments and Continuances.** In accordance with Brown Act section 54955, planning group meetings may be adjourned to a future date. Within 24 hours, a notice of adjournment must be clearly posted on or near the door of the place where the original meeting was to be held.

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If a meeting is adjourned because less than a quorum was present, a new regular meeting agenda must be prepared. If a meeting is adjourned because no members of the planning group were present, the subsequent meeting, if not a regular meeting, must be noticed as if a special meeting.

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In accordance with Brown Act section 54954.2, if a subsequent meeting is held more than 5 days from the original meeting, a new regular meeting agenda must be prepared (*); otherwise if shorter, the original meeting agenda is adequate.

- (4) **Continued Items.** In accordance with Brown Act section 54955.1, if an item is continued from a prior regular meeting to a subsequent meeting more than 5 days from the original meeting, a new agenda must be prepared as if a regular meeting; otherwise the original meeting agenda is adequate.
- (5) **Consent Agenda.** In accordance with Brown Act section 54954.3(a), for items to be considered for a "Consent Agenda" all of the following are required:
1. A subcommittee of the planning group has discussed the item at a noticed subcommittee meeting,
 2. All interested members of the public were given an opportunity to address the subcommittee, and
 3. The item has not substantially changed since the subcommittee's consideration.

The comments of the subcommittee and those made by interested members of the public should be reflected in the minutes of the subcommittee. Any interested member of the public may comment on a consent agenda item. Any interested member of the public may take a consent agenda item off the consent agenda by request.

- (6) **Quorum and Public Attendance.** This Policy defines a quorum as a majority of non-vacant seats of a planning group. In accordance with Brown Act section 54952.2, a quorum must be present in order to conduct business, to vote on projects, and to take actions at regular or special planning group meetings.

In accordance with Brown Act section 54953.3, no member of the public shall be required, as a condition of attendance at any meeting of a planning group, to register or provide any other information. Any attendance list or request for information shall clearly state that completion of such information is voluntary. No member of the public may be charged a fee for admittance.

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- (7) **Development Project Review.** Planning groups may not, as a condition of placing an item on their agenda, require applicants to submit additional information and materials beyond **which** the applicant has been required to submit as part of the City's project review application process.

It shall also be the duty of a planning group, when reviewing development projects, to allow participation of affected property owners, residents and business establishments within proximity to the proposed development.

The planning group shall directly inform the project applicant or representative in advance each time that such review will take place and provide the applicant with an opportunity to present the project.

- (8) **Action On Agenda Items.** In accordance with Brown Act section 54954.2(b)(2), an item not noticed on the agenda may be added if either two-thirds of the entire elected membership, or every member if less than two-thirds are present, determine by a vote that there is a need to take an immediate action, but only if the need for action came to the attention of the planning group subsequent to the agenda being posted.

In accordance with Brown Act section 54953(c), planning groups shall not engage in, or allow, secret ballot or proxy voting on any agenda item. Other methods of absentee voting on agenda items, such as by telephone or by e-mail are also prohibited.

Votes taken on agenda items shall reflect the positions taken by the elected or appointed positions on the planning group identified in Article III, Section 1 of this Policy.

- (9) **Collective Concurrence.** In accordance with Brown Act section 54952.2, any attempt to develop a collective concurrence of the members of a planning group as to action to be taken on an item by members of the planning group, either by direct or indirect communication, by personal **intermediaries**, by serial meetings, or by technological devices, is prohibited, other than at a properly noticed public meeting.
- (10) **Special Meetings.** In accordance with Brown Act section 54956, the chair of a planning group, or a majority of planning group members, may call a special meeting. An agenda for a special meeting shall be specified as such, and shall be prepared and posted at least 24 hours before a special meeting. Each member of the planning group shall

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receive the written notice of the meeting at least 24 hours before the time of the meeting as specified in the notice unless the member files with the planning group secretary a written waiver of notice at, or prior to the time of, the meeting.

Written notice shall be delivered to each local newspaper of general circulation and radio or television station requesting notice in writing at least 24 hours before the time of the meeting. The notice shall identify the business to be transacted or discussed at the meeting. No other business shall be considered at this meeting.

Public testimony on agenda items must be allowed; however, the non-agenda public comment period may be waived.

- (11) **Emergency Meetings.** Brown Act section 54956 describes emergency meetings for matters related to public health and safety. These matters are outside of the purview of a planning group and are prohibited under this Policy.
- (12) **Right To Record.** In accordance with Brown Act sections 54953.5 and 54953.6, any person attending a meeting of the planning group must be allowed to record or photograph the proceedings in the absence of a reasonable finding by the planning group that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the meeting.
- (13) **Disorderly Conduct.** In accordance with Brown Act section 54957.9, in the event that any planning group meeting is willfully interrupted by a person or group of persons, so as to make the orderly conduct of the meeting infeasible, the planning group may first cause removal of the individual or individuals. If that is unsuccessful then the planning group may order the meeting room cleared and continue in session on scheduled agenda items without an audience, except that representatives of the media shall be allowed to remain. The planning group may also readmit an individual or individuals who were not responsible for the disruption.

(b) Subcommittees

Recognized community planning groups are encouraged to establish standing and ad hoc subcommittees when their operation contributes to more effective discussions at regular planning group meetings.

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- (1) **Standing Committees.** Standing subcommittees are on-going subcommittees tasked with reviewing specific issue areas, such as development review. In accordance with Brown Act section 54952(b), all standing subcommittees of a planning group are subject to Brown Act public noticing and meeting requirements as set forth in Council Policy 600-24, Article IV, Section 2(a).
- (2) **Ad Hoc Subcommittees.** Ad hoc subcommittee meetings are established for a finite period of time to review more focused issue areas and are disbanded following their review. While the Brown Act does not impose requirements upon ad hoc subcommittees when made up entirely of members of the planning group and constituting less than a quorum of the planning group (Brown Act section 54952), this Policy requires all subcommittee meetings be noticed and open to the public by inclusion of the meeting announcement on a regular meeting agenda, by an electronic notice, or by announcement at a regular planning group meeting.
- (3) **Committee Composition.** All committees and subcommittees shall contain a majority of members who are members of the planning group. Any member of a committee or subcommittee, who is not a member of the planning group, shall have completed formal training by the City in the duties and responsibilities of community planning groups, before serving on any such committee or subcommittee.
- (4) **Recommendations.** All committee and subcommittee recommendations must be brought forth to the full planning group for formal vote at a noticed public meeting. In no case may a committee or subcommittee recommendation be forwarded directly to the City as the formal recommendation of the planning group without a formal vote of the full planning group.

(c) Abstentions and Recusals

- (1) **Recusals.** Any member of a recognized community planning group with a direct economic interest in any project that comes before the planning group or its committees or subcommittees must disclose to the planning group that economic interest, and must recuse himself or herself from voting and must not participate in any manner as a member of the planning group for that item on the agenda.

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- (2) **Abstentions.** In accordance with the Brown Act section 54953(c), all action taken by the planning group including votes must be taken in public.

In limited circumstances, from time to time, planning group members may abstain from either voting on an action item, or from participating and voting on an action item. The member must state, for the record, the reason for the abstention.

(d) Meeting Documents and Records

- (1) **Agenda by Mail.** In accordance with Brown Act section 54954.1, requests to mail copies of a regular agenda, and any accompanying material, shall be granted. Such materials shall be mailed when the agenda is posted, or upon distribution to a majority of the members of the community planning group, whichever occurs first. A request to receive agendas and materials may be made for each calendar year and such request is valid for that entire year, but must be renewed by January 1 of the following year. A cost-recovery fee may be charged for the cost of providing this service.
- (2) **Agenda at Meeting.** In accordance with Brown Act section 54957.5, any written documentation, prepared or provided by City staff, applicants, or planning group members, that is distributed at a planning group meeting, shall be made available upon request for public inspection without delay. If such material is distributed at a planning group meeting, then it shall be made available upon request at the meeting. If such material is prepared by someone other than City staff, applicants, or planning group members, or is received from a member of the public during public testimony on an agenda item, then the material shall be made available for public inspection at the conclusion of the meeting. Further, the planning group may charge for the cost of reproduction of any materials requested by an individual or individuals.
- (3) **Minutes.** For each planning group meeting, a report of planning group member attendance and a copy of approved minutes shall be retained by the planning group, and shall be available for public inspection. The minutes of each planning group meeting shall include the votes taken on each action item, and should record the names of the speakers, the nature of the public testimony, and whether each project applicant (whose project was subject to planning group action) appeared before the planning group. If an applicant did not appear before the planning group then the

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meeting minutes must indicate the date when and type of notification (e.g., electronic, telephonic, facsimile) provided to the applicant requesting his or her appearance at the planning group meeting. A copy of the approved minutes shall be submitted to the City within 14 days after approval by the planning group.

Planning groups are not required to audio or videotape their meetings but if they do then, accordance with Brown Act section 54953.6, they are subject to a public request to inspect without charge. A cost-recovery fee may be charged for copies of recordings.

- (4) **Records Retention.** In accordance with Brown Act 54957.5, planning group records must be retained for public review. City staff will establish a records retention schedule and method for collection and storage of materials that will be utilized by all planning groups.

- Section 3. It shall be the duty of a recognized community planning group and its members to periodically seek community-wide understanding of and participation in the planning and implementation process as specified in Article II, Section 1 of this Policy. The planning group shall give due consideration to all responsible community attitudes insofar as these are deemed to be in the best long-range interest of the community at large.
- Section 4. It shall be the duty of a recognized community planning group to maintain a current, up-to-date roster of the names, terms, and category/qualifications of planning group members in its possession, and to forward the current roster, as well as any updates, to the City. The planning group must also submit to the City, by the end of March each year, an annual report of accomplishments for the past calendar year and anticipated objectives for the coming year related to the duties enumerated in Article II, Section 1 of this Policy. Rosters and annual reports constitute disclosable records under the Brown Act.
- Section 5. A recognized community planning group may develop a policy for financial contributions from the citizens of the community for the purposes of furthering the efforts of the planning group to promote understanding and participation in the planning process. However, no membership dues shall be required and no fee may be charged as a condition of attendance at any planning group meeting. All contributions must be voluntarily made, and no official planning group correspondence may be withheld based on any individual's desire to not make a voluntary contribution.
- Section 6. It shall be the duty of each recognized community planning group member to

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attend an orientation training session administered by the City as part of planning group and individual member indemnification pursuant to Ordinance No. O-17086 NS entitled "An Ordinance Providing for Legal Representation to and Indemnification of Community Planning Committees Against Claims for Damages, " as discussed further in Article X, Section 1, and any future amendments thereto.

It shall be the duty of the City to offer at least two orientation sessions each year as well as topic-specific sessions intended to advance the knowledge of planning group members in subjects within the scope of responsibilities of recognized community planning groups. Newly seated planning group members must complete an orientation training session within 12 months of being elected or appointed to a planning group, or the member will become ineligible to serve.

ARTICLE VII Planning Group Officers

Section 1. The officers of a recognized community planning group shall be elected from and by the members of the planning group. Said officers shall consist of a Chairperson, Vice Chairperson and Secretary and, by policy, a planning group's bylaws may include such other officers as the planning group may deem necessary. Further duties of the officers may be defined in planning group bylaws.

The planning group shall determine the length of an officer's term in its bylaws, except that no person may serve in the same planning group office for more than eight or nine consecutive years. After a period of one year in which that person did not serve as an officer that person shall again be eligible to serve as an officer.

Section 2. Chairperson. The Chairperson shall be the principal officer of a recognized community planning group and shall preside over all planning group and communitywide meetings organized by the planning group.

Section 3. Vice Chairperson. In the absence of the Chairperson, the Vice Chairperson shall perform all the duties and responsibilities of the Chairperson.

Section 4. Secretary. The Secretary shall be responsible for the planning group's correspondence, attendance records, and minutes and actions [including identification of those planning group members that constitute a quorum, who vote on an action item, and who may abstain or recuse and the reasons], and shall assure that planning group members and members of the public have access to this information. The Secretary may take on these responsibilities or may identify individuals to assist in these duties.

Section 5. The Chairperson shall be a recognized community planning group's representative to the Community Planners Committee (CPC). However, by specific action vote of the planning group, some other member may be selected as

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the official representative to CPC with the same voting rights and privileges as the Chairperson. Each planning group should also vote to select an alternate CPC representative.

Section 6. It shall be the duty of the officers of recognized community planning groups and of the Community Planners Committee representative to promptly disseminate to all elected planning group members pertinent information that is received by the planning group regarding its official business.

ARTICLE VIII Planning Group Policies and Procedures

In addition to incorporating the policies outlined in Articles I through VII into recognized community planning group bylaws, each planning group shall include policies and procedures found necessary for the group's effective operation under this Policy. The following topic areas are those to be addressed. Explanations of when and why to adopt procedures or policies are found in the Administrative Guidelines.

- (1) Community Participation, suggested but not limited to: community outreach; assurances of seeking diverse representation on the planning group.
- (2) Planning Group Composition, suggested but not limited to: methods for anticipated conversion of planning group seats, such as developer seats or appointed seats, as applicable; general membership eligibility and recordkeeping, as applicable; involving the community at large.
- (3) Conduct of Meetings, suggested but not limited to: meeting noticing, including subcommittees; meeting operations such as time limits on speakers and maintaining a civil meeting environment; subcommittee operations such as process for project reviews and bylaw amendments; role of the chair in voting; role of a general membership or the public in discussing agenda items.
- (4) Member and Planning Group Responsibilities, suggested but not limited to: filling vacant seats either during a term or following an election; how planning group positions will be represented to the City; discipline or removal of an individual member; bylaw amendment process, including the development of procedures companion to the bylaws.
- (5) Elections, suggested but not limited to: promoting planning group elections; determining eligibility of candidates and voters; ballot preparation, handling, and counting procedures; poll location and operation criteria; election challenges.

ARTICLE IX. Rights and Liabilities of Recognized Community Planning Groups

Recognized community planning groups operating under this Policy are afforded certain protections for their activities within their identified scope of responsibilities.

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As reviewed in a memorandum prepared by the City Attorney, issued November 3, 2006, (City Att'y MOL No. 2006-26), the Brown Act provides various remedies for violation of its provisions but by implementing bylaws and operating in compliance with this Policy, planning groups will be considered to be in substantial compliance with the Brown Act. Any planning group, or any of its individual members, may seek assistance and training, from the City Attorney to conform with the Brown Act.

Section 1. Indemnification and Representation

A recognized community planning group and its duly elected or appointed members have a right to representation by the City Attorney and a right to indemnification by the City under Ordinance O-17086 NS if: the claim or action against them resulted from their obligation to advise and assist the City and its agencies with land use matters as specified in Policy 600-24, Article II, Section 1; their conduct was in conformance with Policy 600-24 and the Bylaws of the community planning group; and all findings specified in the ordinance can be made.

Section 2. Brown Act Remedies

The Brown Act includes civil remedies (Brown Act sections 54960 through 54960) and criminal penalties (Brown Act section 54959) for violation of its provisions. Thus planning groups are encouraged to proactively cure violations themselves. This is to prevent legal actions that would void planning group actions, and it assures good faith, voluntary compliance with the Brown Act.

Both individual members of a planning group, as well as the planning group as a whole, could potentially be subject to civil remedies. Civil remedies may include relief to prevent or stop violations of the Brown Act, or to void past actions of the planning group, and may in some cases include payment of attorneys fees.

Individual planning group members may potentially face criminal misdemeanor charges for attending a meeting where action is taken in violation of the Brown Act, but only if the member intended to deprive the public of information which the member knew or had reason to know the public was entitled. Action taken includes collective decisions or promises, and also includes tentative decisions, but does not include mere deliberation without taking some action. Alleged violations will be reviewed and evaluated on a case-by-case basis.

Any planning group, or any of its individual members, may seek assistance, as well as training, from the City Attorney to better understand, to implement, and comply with the Brown Act.

Section 3. Council Policy 600-24 Violations and Remedies

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Council Policy 600-24 provides various remedies for violation of its provisions by recognized community planning groups or their elected members. Where a planning group does not cure a violation by itself, it may forfeit its status as a recognized advisory body and lose its right to indemnification and defense by the City.

Alleged Violations by a Member of a Recognized Community Planning Group

In the case of an alleged violation of this Policy or a recognized community planning group's adopted bylaws by a planning group member, the planning group shall conduct an investigation consistent with the Administrative Guidelines and adopted planning group bylaws.

If the planning group, after a thorough investigation, determines that the individual member has violated a provision of this Policy or the planning group's bylaws, the planning group shall, where feasible, seek a remedy that corrects the violation and allows the member to remain as a member of the planning group.

If corrective action or measures are not feasible, the planning group may remove a member by a two-thirds vote of the planning group. The vote to remove the group member shall occur at a regularly scheduled public meeting subject to the procedures outlined in the Administrative Guidelines and in adopted planning group bylaws.

A member found to be not in compliance with the provisions of this Policy not subject to Brown Act or adopted bylaws risks loss of indemnification [legal protection and representation] pursuant to Ordinance No. O-17086 NS, as discussed further in Article X, Section 1, and any future amendments thereto.

Alleged Violations by a Recognized Community Planning Group

In case the of an alleged violation of this Policy or adopted planning group bylaws by a recognized community planning group as a whole or multiple members of the planning group, the violation shall be forwarded in writing to the City for investigation by the Mayor's office. The City will engage in a dialogue with the planning group, determining the validity of the complaint, and seeking resolution of the issue or dispute.

If a violation against a recognized community planning group as a whole is proven and there is a failure of the planning group to take corrective action, the planning group will forfeit its rights to represent its community as a community planning group recognized under Council Policy 600-24. Such a determination resulting in the forfeiture of a seated group's rights to represent its community

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shall be based on a recommendation by the Mayor's office to the City Council. A planning group shall not forfeit its recognized status until there is an action by the City Council to remove the status. The City Council may also prescribe conditions under which official recognition will be reinstated.

A planning group found to be out of compliance with the provisions of Council Policy 600-24 that are not subject to the Brown Act or with its adopted bylaws risks loss of indemnification [legal protection and representation] pursuant to Ordinance No. O-17086 NS.

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SUBJECT: COMMUNITY NOTIFICATION AND INPUT FOR CITY-WIDE PARK DEVELOPMENT PROJECTS

POLICY NO.: 600-33

EFFECTIVE DATE: September 29, 2003

BACKGROUND:

The community review process has been generally successful in gathering input on park development projects. However, this process has become very time-consuming, and staff intensive, resulting in unnecessary impacts on project funding and timelines.

PURPOSE:

The purpose for this policy is to assure that community members have adequate advance notification and opportunity to participate in the design phase of park development projects. It is intended that the process be administratively efficient, structurally predictable, and result in timely community input.

POLICY:

Community Notification: This process is designed to achieve early notification of community members to allow for timely input on park development projects.

In preparation for the community input phase of the project, the project manager will develop a project notification bulletin. This bulletin will include the project location, the proposed scope of work, the goals for the upcoming meeting, time and location of meeting, contact information regarding questions, information regarding posting of the staff report at the community recreation center or park kiosk and any available web site information relevant to the project.

The project manager will also prepare a staff report. This will include additional project information regarding the community concerns and issues, funding limitations and any additional relevant information.

The project manager will notice the officially-recognized recreation council or open space citizen's advisory committee prior to the first community meeting through the following steps:

1. Project manager will notice the staff representative and each member of the officially-recognized recreation council or open space citizen's advisory committee with the project bulletin and staff report.
2. Project manager will notice the appropriate City Council office(s) with the project bulletin and staff report.
3. Project manager to notice the officially-recognized recreation council or open space citizen's advisory committee with a project bulletin and staff report which will be posted. Notification

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shall be provided to the recognized Community Planning Group in absence of the recognized park advisory council. In the notification it shall be clear the processing is via the Council Policy due to the absence of a recognized recreation council or open space advisory committee. If the recognized Community Planning Committee has an established "parks" subcommittee, the process should occur via the Community Planning Group's subcommittee. If no established and staffed subcommittee exists, staff shall bring the project to the full Community Planning Group. The Community Planning Group shall be asked to take action on the park development's design phase which shall be used in the advisory review for the park's final design and compliance with the Council Policy. All notices and hearings should also be noticed to the "nearest" officially recognized recreation council or open space citizen's advisory committee.

4. Project manager will notice the staff representative to the City-recognized local community planning board/group and each community planning board/council member with the project bulletin inviting them to attend the community meeting.
5. Prior to the first community meeting, the project manager will contact the appropriate council office(s) staff representative(s) to seek names of community members who have expressed interest in the proposed project or site. Project manager will notice these community members with the project bulletin.
6. Project manager will coordinate the creation and posting of a sign or community notice at the subject park site identifying the upcoming community meeting and contact information.
7. Project manager will notice surrounding park neighbors within a minimum 300' radius of the park or project site for projects that will be significantly increasing the number of users at the site, for example, a new community or neighborhood park, new joint use areas, visitor center or new lights at an existing site.

For additional notification, the project manager will discuss the next steps for the approval for the project at each community meeting and compile a list of community members who have expressed interest in the project. Based on this list the project manager will contact community members regarding additional community meetings during the design approval process.

Community Input Process: Community meetings should efficiently utilize community members', staff and consultants' time. The meetings should be well organized with a clear purpose. The officially-recognized recreation council or open space citizen's advisory committee will be the sponsor for local community input. Park development projects should be presented to the local community two times receiving a recommendation from the officially-recognized recreation council or open space citizen's advisory committee at the second meeting. The input process should include the following steps:

1. In preparation for the first meeting, the project manager will prepare project information that outlines the roles for the design team and community members, the anticipated scope of work, the project budget and funding sources, and projected time schedule. With this information, the officially-recognized recreation council or open space citizen's advisory committee provides input regarding the development of a

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preferred project program, as well as a community priority ranking of the proposed program elements. This information will give the design team clear direction regarding community desires and will be used to develop conceptual alternatives that maintain community priorities and the project budget.

2. These conceptual alternatives are presented to the officially-recognized recreation council or open space citizen's advisory committee and community at the second meeting. At this second meeting, the community will have an opportunity to review and comment on the proposed alternative plans. Community members will be allowed to: a) recommend individual elements from the conceptual alternatives to be synthesized into a preferred alternative plan, or b) endorse the presented conceptual plan that best meets the outlined project program and priorities identified by the community. Complex projects, such as new community parks or the design for a new recreation center may require an additional meeting with the officially-recognized recreation council or open space citizen's advisory committee. Cost estimates and schedules will be based on the process outlined in this policy. Any additional meeting(s) beyond those outlined will impact the project by increasing the project timeline and reducing the funding available for construction.
3. Following a recommendation from the officially-recognized recreation council or open space citizen's advisory committee, the design team will incorporate the proposed revisions and prepare a preferred project plan for review and recommendation by the appropriate review committees and boards. Each of these committee and board meetings ~~are~~ ^{are} ~~is~~ ^{is} a public meetings and ~~they~~ ^{it} provides additional opportunities for community input. These additional review committees could include:
 - a. SCRAP- Sub-Committee for the Removal of Access Barriers
 - b. FARB – Facilities Access Review Board
 - c. Park and Recreation Board – Area Committees
 - d. Park and Recreation Board – Design Review Committees
 - e. HRB – Historical Resources Board design assistance sub-committee
 - f. HRB – Historical Resources Board

It is intended that each of these committees and boards will require one meeting, assuming all applicable project information is accurately compiled and presented in accordance with Park and Recreation Board Policy No. 1011 and submittal standards established in the Consultants Guide to Park Development. Each of these committees and boards will make a recommendation on the proposed project, with or without conditions, to the subsequent committees or boards. Any conditions of approval will be incorporated into the proposed project, as appropriate, and forwarded to the appropriate decision-making body for approval.

The Park and Recreation Board is a publicly-noticed meeting and is provides an opportunity for additional community input. In most cases, the Park and Recreation Board will make the final decision on park development projects. In some communities, final approval may be required by other decision-makers depending upon jurisdiction, such as the City Council and/or Coastal Commission, etc.

HISTORY:

Adopted by Resolution R-298444 09/29/2003

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